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Number 91 Spring 1992

Special Issue on:

Federalism

D'Amico and Piccone: *The Future of Federalism*
Ulmen: *Schmitt and Federalism*
Schmitt: *The Constitutional Theory of Federation (1928)*
Lepsius: *Beyond the Nation-State*
Kühnhardt: *Federalism and Subsidiarity*
Palaver: *Kohr: Prophet of a Federal Europe?*
Kohr: *Disunion Now (1941)*
Ulmen: *What is Integral Federalism?*

On Benjamin:
Gilloch: *Benjamin and the Flaneur*
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Gilloch: *Benjamin and the Architecture of History*
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Plus Notes and Reviews

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Telos

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VCH Acta humaniora
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Introduction

At first sight "federalism" does not appear controversial in the least. In the US it is seen as smoothly overlapping liberal democracy in this, presumably the best of all possible worlds. Yet, far from having reached the "end of history" as recently advertised by a panglossian ex-State Department ideologist, liberal democracy is turning out to be increasingly inadequate to meet the new challenges of the post-Cold War era. Today even paradigmatically stable and legitimate countries such as Canada and Great Britain are simultaneously threatened by supranational consolidations and internal disintegration into smaller regional units. Among the various proposed radical reforms, however, there has not been much emphasis — at least not yet — on federalism either as the problem or the solution.[1] As M. Rainer Lepsius indicates in this issue, there has been discussion of European unification along federal lines. Some important regionalist movements, such as the Lombard League, have even gone as far as to call for "*integral* federalism" in their plans to reform the central state.[2] Nonetheless, "federalism" remains

1. Some of the more perceptive political theorists are beginning to consider what has been called the federal or the "confederal option" as a possible way out of liberal democracy's historical impasse. As Benjamin Barber has recently put it, the post-Cold War triumphant market economy (*McWorld*) destroys all particularity and otherness — the *nomoi* which give meaning and structure to everyday life — to such an extent that it triggers destructive ethnic, religious and nationalistic reactions (*Jihad*). Cf. Benjamin Barber, "Jihad vs. McWorld" in *The Atlantic*, Vol. 269, No. 3 (March 1992), pp. 53-65. Cf. also W. W. Rostow, "The Coming Age of Regionalism," in *Encounter*, Vo. LXXIV, No. 5 (June 1990), pp. 3-7. Contrary to sclerotic Left analyses, this impasse cannot be broken by socialist or communist solutions since the latter are the political cousins of that liberalism largely responsible for the crisis, sharing both the same Enlightenment ideological lineage and its contradictory outcome. (For a particularly pathetic vindication of the socialist solution, see Ralph Miliband, "Fukuyama and the Socialist Alternative," in *New Left Review*, No. 193 [May-June 1992], pp. 108-114. For reasons unknown, this very same article also appears under a slightly altered title in the *Journal of Democracy*, Vol. 3, No. 3 [July 1992]], pp. 118-124].

2. Cf. the Special Section on "The Leagues in Italy" in *Telos* 90 (Winter 1991-92).

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a very confused concept often exclusively identified — especially by the British during negotiations concerning the shape of the future unified Europe — with the American model of a strong central government rationalizing and regulating practically all aspects of everyday life. Consequently, at a time when central planning has been thoroughly discredited with the collapse of the Soviet Empire and the increasing rationality and motivational crises of almost every Western government, it is not surprising that this particular version of federalism generates hardly any enthusiasm.

As G. L. Ulmen shows in his review of the history of "integral federalism," however, the current unexamined notion of "federalism" is a perverted hyper-statist version of the ambiguous Hamiltonian concept. Although historically identified almost exclusively with efforts to establish a strong central authority able to compete effectively with Great Britain, France and other imperialist European powers, *The Federalist* was still primarily concerned with safeguarding the early American ideals of political autonomy, local control and various personal liberties. A contradiction between centralism and particularism was reluctantly embedded in the US Constitution when, because of the fragility and disorganization of the newly independent states, this *federal* document had to be based *democratically* on "the people" rather than the federating units, as is normally the case in federations. This contradiction was finally resolved on the statist side with the Civil War when the imperatives of industrialization, especially the homogeneity required for rapid capitalist development, clashed with an agrarian Southern economy based on slavery — a pre-modern institution increasingly seen not only as morally objectionable but economically dysfunctional. Notwithstanding the cost of such a bloody war, the statist interpretation of federalism imposed by the triumphant Union continued to meet considerable resistance well into the 1930s, both in the North as well as the South — a resistance predicated on the deep-rooted American ethos of individualism, autonomy and anti-authoritarianism. It was finally institutionalized during WWI, the Great Depression, WWII and the Cold War, i.e., in connection with national emergencies requiring considerable centralization of authority and resources.

After more than a century of nation building, today the American government does not differ significantly from that of any other traditional nation-state. In the wake of the Civil Rights movement, all pretenses of safeguarding the specificity of the individual federal units have either been forgotten or explicitly rejected as a vestige of racism,

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prejudice and provincialism. Enlightenment ideology, pseudo-universalism and the state combined in a project of "Americanization" which sought to homogenize the population by encouraging the development of a national character suitable for capitalist development while obliterating all traces of particularity, specificity and otherness. Notwithstanding the deployment of powerful homogenizing strategies such as the culture industry, consumerism and mass education, this project not only failed to achieve its main objective but eventually resulted in today's "multi-culturalism" and its artificial reconstitution of ethnicity. It did, however, change the US from what Tocqueville accurately described as a conglomeration of autonomous heterogeneous communities into a powerful nation-state "federal" in name only. Although the US government has been in a serious rationality crisis for quite some time — both major political parties now routinely run electoral campaigns on anti-Washington platforms and politicians seek to avoid any association with "the establishment" — there is hardly any public awareness of the *constitutional* and *structural* roots of this crisis.

Problems are usually seen in terms of poor leadership, political corruption, or character flaws — idiosyncratic failures whose contingency indirectly re-legitimates and shields from criticism an increasingly questionable political framework. But the crisis of the central state goes much deeper than the quality of government personnel. It is inextricably tied with the antinomies of modern liberal democracy. Such a political system presupposes social homogeneity, i.e., a broad consensus concerning fundamental values only partially objectified in social and legal institutions. In spite of their allegedly formal and value-neutral character, bureaucracies work well only within a broad pre-existing axiological consensus which operates as an internalized reservoir of unstated norms complementing and implicitly legitimating necessarily partial rules and regulations. This consensus cannot be manufactured artificially by the culture industry, the bureaucracy or "the Party." It can only be generated through voluntary personal choices of a populace even before it formally constitutes itself into a citizenry. Given the heterogeneity of practically all of today's *national* constituencies (an irreducible diversity impossible to satisfy with any single substantive policy) the managerial state can no longer appeal to this implicit axiological consensus and can only govern by means of formal rationality and by recourse to transcendental rights already embedded or arbitrarily read into the Constitution.

This political strategy must exclude all implicit or explicit substantive

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values not reducible to these rights and, in attempting to build a consensus out of such an impoverished political constellation, restricts social obligations and responsibilities — civic virtues[3] — solely to the formally codified domain thus degenerating into expediency, i.e., their *literal* meaning, which subverts their *spirit* more thoroughly than any outright rejection. This predicament results in what sociologists such as Niklas Luhmann and Anthony Giddens have described as the erosion of that "social trust" necessary for the smooth functioning of any system. Without it, governing turns into an increasingly impossible enforcement of constantly multiplying norms necessary to cover all possible instances of social behavior previously *informally* regulated by traditions and customs.

Large heterogeneous nation-states cannot privilege any implicit norms or sub-groups without alienating significant sectors of their constituency and undermining national unity. Consequently, they have to restrict their programs solely to what is consistent with the existing constitutional framework to *minimally* representing all constituencies at the price of not representing *effectively* any particular one.[4] With only a few often conflicting constitutional rights to bind the national constituency, public life becomes so sterile that meaning can be found only within one-dimensional voluntary associations or nostalgic recyclings of long-gone and irretrievable traditional identities. As a result, these *de facto* interest groups tend to proliferate to the point that their particularistic demands cannot be all simultaneously met by state policy — policies which always presuppose an enthymematic axiological foundation. Not surprisingly, this implicit residual WASP foundation is increasingly challenged, forcing the state to constantly make explicit its policy presuppositions and thus open them for re-negotiations.[5] The outcome is administrative paralysis and universal dissatisfaction. Thus, contrary to its formal-rational ethos, in order to continue functioning such a system is forced more and more to find recourse to *illegal* and *extra-legal* informal means such as corruption and crime, further

3. Christopher Lasch, "Liberalism and Civic Virtue," in *Telos* 88 (Summer 1991).

4. This is why, in seeking to do so by prioritizing or expanding conflicting rights, recent Supreme Court decisions concerning hyper-politicized issues such as abortion tend to satisfy neither side. Given the present social, political and constitutional situation, there is no way to resolve the issue either by means of federal legislation or constitutional reinterpretation. For an example of contradictory liberal efforts to reconcile irreconcilable positions within an heterogeneous national constituency, see E. J. Dionne Jr., *Why Americans Hate Politics* (New York: Simon & Schuster,1991).

5. For an elaboration of this theme, see Paul Piccone, "The Crisis of Liberalism and the Emergence of Federal Populism," in *Telos* 89 (Fall 1991), pp. 7-45.

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delegitimating the predominant political framework. Similarly, *legality* can no longer provide guidelines for social practices and ends up displaced by *super-legality*. Thus today all meaningful politics is *protest*, and all negotiations are confrontations.

The headline "Ungovernable" with which the Italian newspaper *La Repubblica* summarized Italy's predicament after the most recent elections could also apply, although to a considerably lesser extent, to France, England, Germany and especially the US. It is the same managerial crisis which in Eastern Europe has reached self-destructive levels triggering a resurgence of nationalism and ethnicity occasionally culminating in bloody civil wars compared to which American "multi-culturalism" seems idle academic chatter. Within such a context only the loosest possible federal arrangements can relegitimate hitherto repressed particularities reorganized within relatively autonomous communities, in the effort to create conditions conducive to a *spontaneous* development of a common ethos nurtured by the concrete interaction of free subjects within reconstituted communities. Unless it develops spontaneously, no new common ethos will ever successfully transform previously serialized communities into modern democratic societies. To the extent that exactly the same general dynamics are at work in the West, it is essential to re-examine a number of political ideas which have been wrongly relegated to an allegedly transcended past.[6]

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6. Federalism is by no means the only political concept in need of careful scrutiny. The same goes for "nationalism," "ethnicity," etc. They tend to remain embedded in questionable ideological contexts even when systematically re-examined by qualified scholars. Cf. Benedict Anderson's "The New World Disorder," in *New Left Review* 193 (May-June 1992), pp. 3-13. In reinterpreting nationalism and ethnicity within the context of recent European history, Anderson deploys traditional economic reductionism and concludes by indicting "the market" as the agent of all instability and disruption. Accordingly, capitalism is blamed for generating "nationalism" and "ethnicity." Aside from being in ironic contrast to Marx's often forgotten homage to capitalism's main tendency to sweep away all vestiges of pre-modern forms of social life, this analysis re-proposes Marxism as the universal solution to all problems and occludes the real dynamics responsible for the resurgence of ethnicity and nationalism. Anderson is correct only in the sense that both of these concepts were originally constituted *in response* to the disintegration wrought by capitalist development. What they sought to capture, however, are the remnants of a reality which, to the extent that it had been "obvious" and immediately given, did not have to be thematized. Capitalism did not constitute ethnicity, as Anderson implies, but only forced it upon Western consciousness *as a problem*. "Barbarians" have been doing so ever since the Greeks defined them as such. Only after liberalism and Enlightenment ideology, rather than capitalism as such, systematically delegitimated and obliterated pre-modern forms of life did it become necessary to reconstruct social identities out of traditional cultural ruins. The standard Marxist solution, the melting of all particularistic identities in a generic classless proletariat marketed as the prototype

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This process of simultaneous disintegration and re-integration was discussed incisively by Leopold Kohr over half a century ago in a summary article (reprinted in this issue) subsequently expanded into a book, *The Breakdown of Nations*. Because of WWII and the Cold War, these issues have remained on the margins of political philosophy. Now that the international situation has changed drastically, again setting in motion the destructive dynamics Kohr correctly diagnosed, they acquire new relevance. Although his book is not without problems, e.g., its dubious biological and theological speculations, the central argument is a vigorous attack on the nation-state in terms of its implicit theory of history, progress, management and economic structure. Kohr proposes the alternative of strong regional units based on what Benjamin Barber has called "strong democracy," with autonomous political and economic power loosely linked through contractual agreements.

One of the main problems with nation-states is that they are much too large to permit the practice of this type of democracy necessary to reconstitute communities where demographic heterogeneity and social disintegration have reduced the *public* to a *mass*. Federalism proposes to solve this problem by relegitimating the autonomy of local communities as the only political loci where this reconstitution can take place. Without these molecular communities, participatory democracy is impossible and its automatic substitute, representative democracy rapidly degenerates into manipulation by the predominant particular interests. Unlike representative democracy, which presupposes precisely what is increasingly lacking today, i.e., a *common* will already given within a context of pre-existing axiological homogeneity, the practice of participatory democracy can in principle actively transform serial constituencies into groups of citizens and thus create this *common* will. Within participatory democracy the negotiation of a consensus is simultaneously a democratic *Bildung* which can generate a new homogeneity and, consequently, community bonds, where few existed before. In the absence of such a political process, the demographic heterogeneity present in most modern societies leads to an unbridgeable gap between

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of the "universal class" is a poor sectarian redescription of precisely that very same alienated liberal *mass* which constantly triggers ethnic and nationalistic revivals. Furthermore, to blame all disruptions on the market presupposes that central economic planning remains the solution and can reverse the unintended consequences of economic development. After nearly 80 years of experimentation the indisputable conclusion is that no central planning can successfully manage the problems of a nation-state without relying on *informal* mechanisms and by surreptitiously reintroducing the market — and even then it is not clear that the nation-state can keep functioning effectively.

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alienated, indifferent voters and an unresponsive, unaccountable administrative apparatus unable to manage the *res publica* effectively on the basis of clear political mandates.

Only if these viable political units are given can a federation — a political system predicated on *already organized* and *functioning* constituencies rather than particular individuals — deliberate on the basis of precise constitutional guidelines and representative democratic procedures, on matters which the particular units cannot handle by themselves. This is why the principle of subsidiarity is a *sine qua non conditio* for federalism, along with the general requirements that the individual federal units be roughly equal in size and economic power. As Ludger Kühnhardt's "Federalism and Subsidiarity" points out, the principle of subsidiarity is necessary to guarantee the autonomy and identity of the fundamental units. While federalism seems to reject outright grandiose abstract projects of social engineering designed to generate "the new man (or woman)," an allegedly higher culture or a new society in favor of really existing people, their traditional *modus vivendi* and existing communities — the *status quo*, it is by no means tied to conservative doctrines embodied in, e.g., Papal Encyclicals, as Kühnhardt implies. Rather, it presupposes that such projects cannot be entrusted to bureaucracies, political Parties or a New Class of intellectuals and experts, but must be undertaken by the social subjects themselves, in their everyday life, or the results will invariably be new and more technologically sophisticated relations of domination. After the sudden collapse of centralized projects of social emancipation, federalism resurfaces as a viable framework within which to articulate limited utopian visions but where feedback mechanisms quickly invalidate faulty schemes or, at least, contain the damage.

Today federalism is not accorded the *theoretical* attention it deserves largely because it has been relegated by Enlightenment ideology to the limbo of pre-modern politics or to the *de facto* logistics of highly centralized states such as the present US government. As Ulmen shows, the Proudhonian brand of "integral federalism" and federal theorists such as Alexandre Marc and Daniel Elazar are still practically unknown. Similarly, buried within his 1928 work on constitutional theory, Carl Schmitt's "Constitutional Theory of Federation" has long been forgotten, although it provides a detailed examination of federations in terms of which a theory and history of federalism can be reconstructed.

Schmitt's account, however, is by no means a defense of federalism. Even earlier, in 1924, he had been against proposals for reforming the

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Weimar Constitution and later, in 1932, he took the side of the Reich against Prussia in opposing more decentralized authority. In fact, in the wake of his devastating critique of parliamentary democracy, his analysis of the irreversible decline of the traditional nation-state and the end of the *jus publicum Europæum*, Schmitt's post-1932 political decisions may have been related not only to his political opportunism and his automatic acceptance of the *status quo* (and thus of whatever power relations happened to predominate), but also to his failure to seriously entertain federalism as a possible reform strategy. This has had significant implications since, without a federal structure, possible alternatives to the fading nation-state can and have been interpreted by liberal critics as sophisticated versions of precisely the kind of authoritarian solutions which were deployed in the 1930s. Thus Schmitt's concept of *Grossraum*, projected after 1939 as the new *Nomos der Erde* meant to displace the *jus publicum Europæum*, could be read as a euphemism for a new and more perverse kind of imperialism — which is precisely the sense in which Hitler independently used it. Of course, at the time of the 1924 Jena Conference on federalism Germany was so threatened by inflation and other crises, and in the early 1930s by both Nazism and Communism that it was difficult to envision any viable political options beside defending at all costs the Weimar constitutional order — even to the point of empowering the President with emergency dictatorial powers as Schmitt recommended. But political theory need not be restricted only to what is possible at a particular historical juncture.

Federalism is a viable response to the obsolescence of the nation-state, which can no longer fulfill its historical role or effectively manage the *res publica*. After the authoritarian involution of 20th century collectivist projects — both liberal and socialist — and the explosion of heterogeneinty as a result of massive migrations, participatory democratic structures able to reconstitute viable organic communities can be guaranteed only by deploying concentric federal structures. At any rate, as Ulmen's "Schmitt and Federalism" argues, Schmitt's analysis at the time was concerned primarily with clarifying the legal status of federalism in Weimar Germany and, indirectly, the relation of the League of Nations to Germany. Since the League was *not* a federation it could not exercise the kind of international authority it claimed as the legal and moral basis in terms of which to punish those countries which had lost the war.

Schmitt holds that a federation is a *status* contract between roughly equal units entered into for purposes of protection, administration, and

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integration. In addition to providing protection, the point of the agreement is to allow for federal intervention to enforce the terms of the constitutional contract. As a *status* contract rather than just another private contract between otherwise unaffected units, the federal constitution changes the very nature of the federating units.

Schmitt goes on to argue that the federalist project is besieged by a series of "antinomies" — first and foremost between federalism and democracy — and that there is a constant tension between the autonomy of the federal units and the need for federal intervention. Since a federation is stronger than an alliance, a new political identity emerges which, even while it strives to preserve "dual power," constantly threatens to usurp the autonomy of the smaller units. In the long run, the tendency toward centralization is a major threat to the federal structure and tends to replace it with a unitary government. Schmitt's solution to the "antinomies" of federalism requires the homogeneity of member states. But homogeneity is an ambiguous term which can mean anything from a minimal agreement that is, by definition, the point of making a contract, all the way to the more stringent requirement that the various federal units have substantively the same ethnic, cultural, religious, and moral composition. Obviously there must be a minimal level of agreement or a federation would not be possible. The problem with deploying homogeneity as a solution to the so-called antinomies of federalism is that Schmitt must mean the stronger substantive unity which today is practically impossible to secure.

Evidence for this is Schmitt's claim that an irreducible "existential decision" ultimately resolves the question of sovereignty in federalism by articulating a deep, inexpressible bond among the people. At any rate, this is no solution since, paradoxically, for Schmitt, both the existence and the non-existence of homogeneity eventually renders the federation impossible. Without homogeneity the units simply cannot federate. However, the successful establishment of this very same homogeneity ultimately turns the federation into a unitary national state. At best, for Schmitt, federalism can only be a transitory stage in forming a new state different from the obsolete traditional nation-state of the *jus publicum Europæum*. This may also explain why he could so readily reconcile himself with the new order when the Third Reich was launched with the promise of a vaguely defined yet qualitatively different new era.

The second problem with Schmitt's account is that it summarily dismisses important historical examples that do not fit his pessimistic conclusion about the instability of federal projects. Specifically, there is

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no systematic discussion and evaluation of the Swiss example or an elaboration of American federalism both in its early and post-Civil War versions. Although written before the Great Depression and the New Deal, and therefore well before the American federal government became the present centralized Leviathan, Schmitt pinpointed its internal contradictions and prefigured its eventual outcome. Yet he also indirectly indicates possible alternative solutions. While uneasy with the democratic ethos, to the point of characterizing himself as a "*katechon*," he implicitly accepted the Enlightenment theory of history postulating an irresistible thrust towards massification, centralization and rationalization (otherwise his self-definition as a *katechon* does not make any sense). Ultimately, *nolens volens*, as a man of his times he was caught in the predominant assumption of Weber's mythological "iron cage" and of the irreversible rationalizing and centralizing thrust of modernity. His subtle dismissal of federalism as a viable political solution was premised on these assumptions, according to which it is only a transitory political phase in the logic of centralization and homogenization of modern society.

The third problem is that Schmitt, as a result of these questionable assumptions, rejected the possibility of secession by units within an established federation. Although seeking a *differentia specifica* for federalism, he dismissed the possibility that this may be precisely the federalized units' power of secession. Contrary to Schmitt, this right protects the political autonomy of the unit states and helps preserve the federation in periods of crises. In critical confrontations among the units of a federation, i.e., situations which cannot be resolved through normal negotiations and compromises, there are three possible solutions: secession, exclusion and war. Of these, the third usually destroys the federation, as in the various examples Schmitt himself discusses or, as in the case of the US, changes its character so thoroughly that the federal system ceases to be. Schmitt's main argument against secession is based on the claim that the federation is a *status* contract which redefines the nature of the federating units. But *status* is not irreversible, and constitutional changes are always possible — especially if the alternative is war. Thus nothing in principle rules out a change in the units' *status* which, no matter how much friction it may generate with the remaining federal members, is preferable to either war or holding the federation together against the particular unit's will.

Contrary to Schmitt's claim that homogeneity is the only possible solution to the "antinomies" of federations, the way to guarantee the

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autonomy of the units under the threat of federal intervention and the federation's tendency to erode the powers of subsidiary units is to permit secession. No political unit is eternal and federations do not necessarily have to end catastrophically, as they often do, in wars. Although it may require costly and disruptive internal restructuring, secession is always preferable to a destructive civil war. The legal secession of Slovakia from Czechoslovakia is definitely preferable to the bloody unilateral secession of the various republics in the former Yugoslavia. Similarly, if and when Quebec decides to go its own way, it makes sense to accept the decision rather than enforce an unwanted unity. And even in the US it is not at all clear that, had the South succeeded in seceding without a Civil War, the subsequent history would have been substantially different.

Given new communication technologies and complex patterns of economic interdependence, federalism makes sense both as a theory for the aggregation of other smaller federations and as the framework of more regional organizations displacing existing nation-states. If the basic constituting units are autonomous entities already dealing effectively with a wide variety of decentralized social functions, it is possible to envision reorganization and secession as *normal federal practices*. In beginning to envision such complex possibilities, Schmitt's historical and juridical analysis of the nature of federations is a useful complement to Hamilton and Madison on the one hand, and Proudhon and the integral federalists on the other.

Schmitt does not mention Proudhon's integral federalism, which differs from the better-known Hamiltonian version precisely in its aversion to statism and centralization. Yet Schmitt correctly emphasizes the self-destructive tendencies of Hamiltonian federalism, the antinomy between federalism and democracy, and the inherent tendency towards a unitary national system. Otherwise well-informed advocates of European federalism, such as Kühnhardt, dismiss these warnings and advocate a European federation burdened, even before its inception, with all the flaws of US "federalism," at a time when the latter is in dire need of substantial reform. Thus Kühnhard's call for the empowerment of the European Parliament and his emphasis on human and civil rights as the foundation of the federal constitution is the surest way to doom the nascent European federation. As Lepsius points out, the kind of centralization required by such a "federal" model will not only be unacceptable to the various existing nation-states, but the resulting European state would be besieged by so many intractable nationality problems as to make the Balkans look like a close-knit clan.

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Although he clearly outlines the internal problems in the kind of statist federations such as Kühnhardt advocates, Lepsius also accepts this concept of federalism as adequate and proceeds to show why it is not relevant to the present situation in Europe. While he briefly considers the option of a "Europe of regions," he dismisses it on the questionable ground that such regions are not sufficiently self-contained to constitute the federation's fundamental units. But this criticism overlooks that the proposed new regional units have already begun to redefine themselves precisely in more self-sufficient terms (e.g., the Lombard League's self-redefinition as the Northern League). Also, Lepsius' notion of a given national homogeneity is increasingly untenable and he does not even consider whether the rationality crises of modern nation-states can be resolved without considerable decentralization of present state functions. At any rate, Denmark's recent failure to ratify the Maastricht Treaty prefigures some of the problems involved in attempting to federate "lions" with "mice," and the extent to which Kohr's warnings about viable and unviable federations ought to be seriously considered. Lepsius' cautious conclusion that European unification should take place very slowly by first Europeanizing the existing nation-state *from within* and only afterwards prefigure a Europe as a "multinational state" is hardly viable. It is precisely because of terminal flaws with "multinational states" such as Yugoslavia and the former USSR that new models of integral federalism are becoming relevant. What has spared the US and Canada a similar fate so far has been geographical mobility, which has prevented the identification of any region with particular ethnic groups, and long-standing democratic traditions still allowing a considerable amount of local self-determination.

In a different context, the same problems of centralization, inefficiency and unaccountability reappear within culture. While the image of an omnipotent monolithic culture industry imposing "bourgeois" ideology and legitimating relations of domination has long since been discredited, the value of popular culture remains debatable. For some academic literary critics, popular culture is linked to the possibility of a socialist culture in a context where, notwithstanding all that has happened, the lure of a pristine socialism, purified of the corrupting influence of "Stalinism," remains as powerful as ever. Consequently, academic cultural criticism remains fixated on the outdated question of whether popular culture is manipulative or emancipatory, much as radical economists continue to debate whether central planning is representative of collective interests or it perpetuates bourgeois domination.

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Thus some figures in the radical academic establishment have attempted to locate emancipatory features in popular culture in opposition to the traditional Frankfurt School attack on the possibility of an emancipatory centralized culture. With Marxist theory in shambles, but Literary Critical Theory gaining academic respectability, the tendency has been to relegitimate Marxist projects of large-scale social transformation through literary appeals. Similar to Jameson's recent instrumentalization of Adorno to vindicate Althusserian Marxism, the recent Benjamin revival may be located within such a political horizon. Most recent interpretations of Benjamin hypostatize his brief Marxist interlude at the expense of his other often conflicting interests. The objective is to reconstitute a Marxist Benjamin providing an analysis of culture enjoying the intellectual prestige of the Frankfurt School while buttressing the most simplistic Marxist dogma. This ideological maneuver is facilitated by the fact that most of Benjamin's *Nachlass* — a huge stack of heterogeneous notes recently published as the *Passagen-Werk* — allows for a variety of interpretations, including Marxist ones. Unfortunately, as Eva Geulen and Graeme Gilloch show, the latter can be carried out only so far without doing considerable injustice to the totality of Benjamin's work and by underemphasizing his fundamental notions. Thus Susan Buck Morss' recent book on *The Dialectics of Seeing*, a painstaking reconstruction of the *Passagen-Werk* likely to remain a standard text on the subject for some time, suffers from precisely this flaw.

Similar problems plague some of Benjamin's most intriguing figures such as "the flaneur" — the proletarian version of a cultural hero — which, on closer examination, turns out to be a rather pedestrian chap. As Gilloch shows, Benjamin's search for radical alternatives failed. The limits of modernity may be found precisely in the decline of formerly great cities into expansive, unmanageable and crime-ridden tombs of anonymity and despair. The Arcade is giving way to the sarcophagus and the only aura left is the commodity's encoded cultural and sexual associations meant to compensate for its declining use-value. As the mature Faust eventually discovered, meaning is found within organic communities. Today the reconstitution and protection of such communities require federal arrangements whose internal logic does not result in their disintegration.

Robert D'Amico and Paul Piccone

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Schmitt and Federalism: Introduction to "The Constitutional Theory of the Federation"

G. L. Ulmen

The Greeks developed federal arrangements, but no thinker comparable to Plato or Aristotle articulated "federalism" systematically any more than later in the Roman Republic. Neither Madison's and Hamilton's political arguments in *The Federalist* nor Proudhon's philosophical arguments in *The Principle of Federation* provide an adequate theory of federalism. Schmitt's "Constitutional Theory of Federation," the fourth and concluding part of his *Verfassungslehre*,[1] is similarly deficient. But it does provide an historical overview of modern federations and in so doing an analysis of the main problems of federalism. The focus of his analysis is the role of federalism in the Weimar Constitution. While the first three parts of *Verfassungslehre* discuss the antithesis between liberalism and democracy, the fourth, "The Constitutional Theory of the Federation," concludes the volume with a discussion of the antithesis between democracy and federalism. Whatever the shortcomings of this analysis, it provides a crucial point of departure for a debate on the problems and prospects of federalism at a historical turning point.

Federalism in Historical Perspective

At roughly the same time he wrote *Verfassungslehre* Schmitt argued that the state is no longer a clear concept since it has lost its monopoly of the political: "The equation state=politics becomes erroneous and deceptive at exactly the moment when state and society penetrate each other.

1. Carl Schmitt, *Verfassungslehre* (1928), Fifth Edition (Berlin: Duncker & Humblot, 1970), pp. 363-91.

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What had been up to that point affairs of state become thereby social matters and, vice versa, what had been purely social matters become affairs of state — as must necessarily occur in a democratically organized unit."[2] Not only did democracy "do away with all the typical distinctions and depoliticizations characteristic of the liberal 19th century," liberalism blurred "the boundaries between state and society."[3] As the state's radius broadened, its form became increasingly problematic. The dissolution of the European sovereign state at the end of the 19th century had raised the question of the *status* of the constitution, understood as the political entity which had absorbed all other relations.

Until the 1918 revolution Germany had been a "constitutional monarchy," which had not only considered everything outside the constitution "unjuridical" but formalized everything in the constitution as constitutional law. But the problematic designation "constitutional monarchy" had not solved the contradictions inherent in the "bourgeois compromise" of the Second Reich (founded in 1871 under the Bismarck Constitution), i.e., between the Prussian state and a liberal state, and had left open the fundamental question of whether legitimacy was dynastic or democratic. In Schmitt's view, the Weimar Constitution signaled the victory of the latter over the former, which was also a victory for liberalism. There was an attempt to retain the empty shell of 19th century liberalism in Hans Kelsen's normative theory of the state, but even this theory no longer expressed the old liberal belief in the "sovereignty of reason" but rather a contradictory position in which sovereignty was identified with the constitution and then relativized into constitutional law. The democratic principle of the constituent power of the people had been realized in practice, while in theory the legacy of liberal constitutionalism lingered.

Schmitt first addressed the question of a "true" federation in a treatise on the League of Nations.[4] In "The Constitutional Theory of the Federation" he confronts Weimar's constitutional predicament in relation

2. Carl Schmitt, *The Concept of the Political*, trans., introduction and notes by George Schwab (New Brunswick, NJ: Rutgers University Press, 1976), pp. 19-20.

3. *Ibid.*, p. 23 (trans. altered).

4. Cf. Carl Schmitt, "Die Kernfrage des Völkerbundes," Vol. 18 of *Völkerrechtsfragen* (Berlin: Ferdinand Dümmlers Verlagsbuchhandlung, 1926). Cf. also Carl Schmitt, "Der Völkerbund und Europa" (1928), pp. 88-97, "Reich — Staat — Bund: Antrittsvorlesung gehalten an der Kölner Universität am 20. Juni 1933" (1933), pp. 190-98, "Über die innere Logik der Allgemeinpakte auf gegenseitigen Beistand" (1935), pp. 204-09, and "Die siebente Wandlung des Genfer Völkerbundes" (1936), pp. 210-13, all in Schmitt, *Positionen und Begriffe im Kampf mit Weimar — Genf — Versailles 1923-1939* (1940), Second Edition (Berlin: Duncker & Humblot, 1988).

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to earlier efforts to amend its constitution. The debate concerning Germany's membership in the League of Nations had not ended in 1926, and Bavarian groups advocating federalism early in the Weimar Republic had raised the same issues involved in the Prussian question which were resolved only in the famous 1932 trial (the *Preussenschlag*) where Schmitt defended the Reich against Prussia.[5]

Historical precedents were instructive.[6] The Germanic Confederation established on the ruins of the Holy Roman Empire (the First Reich) at the Congress of Vienna endured for half a century (1815-56). It was displaced in 1867 by the North German Federation, then by the Second Reich in 1871. While debates concerning federalism during the

5. Carl Schmitt, "Schlussrede vor dem Staatsgerichtshof in Leipzig in dem Prozess Preussen contra Reich" (1932), in Schmitt, *Positionen und Begriffe*, *op. cit.*, pp. 180-84. Although Bismarck often spoke in favor of federalism, he opposed the democratic-parliamentary unity of the *Reichstag*. His argument against particularism was predicated on the fact that other German states were opposed to the unity of both Prussia and the *Reichstag*. He attempted to make Prussia's hegemony more palatable by dressing up its urge for unity in federalist trappings, but his 1871 Constitution actually prefigured institutions predicated on state sovereignty. In theory, the Reich had a contractual foundation and the member states had sovereignty. In practice, the executive and legislative branches were unitary institutions, while the *Bundesrat* was federal. When the Reich sought to resolve the jurisdictional dispute with Prussia in the 1932 *Preussenschlag*, the Supreme Court confirmed the independence of the *Länder*. Schmitt argued that a strictly legal institution such as the Supreme Court could not fulfill the role of the guardian of the constitution as well as the president of the Republic because the Constitution embodies both a political and a legal system. Specifically, he argued that the Reich's federal enforcement against Prussia was consistent with Art. 48 of the Constitution and did not destroy the legal basis of Prussia's representation. His objective was not to elevate the president above the constitution but to allow him the mandate of a "commissarial dictatorship" should such a need arise. The court's decision was not based on the clear wording of the Constitution but on a constitutional theory of the federal state — the kind of federal thinking that put "German unity into a straitjacket of a confederation or a federal state" and always tended "to consider the Reich something higher than a state and ended making it something lower." Cf. *Der deutsche Föderalismus/Die Diktatur des Reichsprasidenten*, Reports by Gerhard Anschütz, Karl Bilfinger, Carl Schmitt and Erwin Jacobi, Vol. 1 of "Veröffentlichungen der Vereinigung der deutschen Staatsrechtslehrer" (Berlin and Leipzig: Walter de Gruyter, 1924), p. 196.

6. In many respects Schmitt's model for 'The Constitutional Theory of Federation" was Hegel's treatise on "The German Constitution," in *Hegel's Political Writings*, trans. by T. M. Knox, with an Introductory essay by Z. A. Pelczynski (Oxford: Clarendon Press, 1965), pp. 143-242. According to Schmitt: "German commentators succeeded in giving this extraordinary and youthful work of genius a new relevance. . . . It was used as a touchstone in the following century and, as the eminent theoretician Sir Frederic Pollock said of Aristotle's *Politics*, one could immediately recognize in every book and article concerned with questions of politics and law whether the author knew Hegel's treatise on the German Constitution." See Schmitt, "Die Kernfrage des Völkerbundes," *Völkerreschtsfragen*, *op*, *cit.*, p. 39n.

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Second Reich focused primarily on whether it was a confederation (*Staatenbund*) or a federal state (*Bundesstaat*), during the Weimar Republic the main issue was the relation between federalism and democracy. They were fueled primarily by Bavaria's resistance to Prussian hegemony and the unitaristic implications of both democracy and Prussianism. In Schmitt's view, while Bavarian attempts to render the Weimar Constitution more federal were symptoms of the perennial German problem of particularism, attempts to solve the problem of Prussian hegemony succeeded only in eliminating federalism.

When Bavaria called for federal constitutional reforms a conference on federalism was convened in 1924 to consider the matter. Schmitt did not participate in the debate,[7] but he clearly sided with Gerhard Anschütz' and Karl Bilfinger's majority opinion. According to the former, the Weimar Constitution was even less federal than Bismarck's. Although the jurisdictional division between the Reich and the member states left room for self-determination, the right to participate in federal decisions was mostly formal. The fact of the matter was that most members of the Weimar Constituent Assembly wanted a unitary state. But even had this not been the case, the victory of democracy over monarchy was itself leading in a unitary direction since the constituent agents of the new constitution were not the individual states but the people as a whole. Individual states were no longer autonomous agents but provinces in that their right of self-determination and Reich participation was even more limited than before. While legislation was still a *Länder* prerogative, the principle that Reich law supersedes state law was even stronger than in the Bismarck Constitution.[8] While the latter had

7. Schmitt and Erwin and Jacobi were the main speakers during the second half of the program, devoted to "Thr Dictatorship of the Reich President."

8. Other examples adduced by Anschütz were the limitation of financial jurisdiction as regards taxation and the sovereignty of the Reich with respect to the stability of the *Länder*. The subordination of the *Länder*'s interests to those of the Reich was less the result of the urge for a unitary state than of financial necessity. The Reich's only real power was the army — needed not so much against *external* as *internal* enemies. Since constitutionally the army could only undertake those actions requested by the *Länder*, Anschütz concluded that "here too the Reich machine is lubricated not with a drop but with a *considerable quantity of federal oil*." Cf. Gerhard Anschütz, "Der deutsche Föderalismus in Vergangenheit, Gegenwart und Zukunft," in *Der deutsche Föderalismus*, *op. cit.*, p. 21. Anschütz, and later Schmitt, rejected attempts to amend the Weimar Constitution as well as the notion that the relation between the Reich and the *Länder* was comparable to that between society and the individual. As long as the Reich was a democratic republic, the *Länder* could not be allowed to have fundamentally different forms of state, such as monarchy or Bolshevism. Schmitt also concurred with Bilfinger, who pointed out that the Bismarck Constitution only spoke "the language of federalism,"

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turned the *Bundesrat* into one of the main governmental agencies, the Weimar Constitution prefigured a *Reichsrat* consistent with the democratic representation of the whole German people in the *Reichstag*.

Europe and the League of Nations

The question of federalism during the Weimar Republic arose not only in relation to the Weimar Constitution but also in connection with Europe and the League of Nations. Schmitt found both concepts ambiguous. Advocates of a United Europe hoped the League would become a European organization, while their opponents spoke of a "crisis of Europeanization" because the latter would destroy the League as a "universal" organization. Schmitt saw the problem primarily in terms of the overwhelming power of the US.[9] The League's spiritual father, Woodrow Wilson, had wanted it to be a "universal" organization, but the substantive universality presupposed by his idea of "global democracy" had already been redefined territorially and even then the US had refused to join. Schmitt was no friend of Wilson's "global democracy," which he saw as an expression of pseudo-universalism similar to Leninism. But he insisted that without substantive universality the League would lack the ability to make decisions with respect to war and peace. Regarding the political difficulty posed for non-European powers by a United Europe, he recalled the European system established at the 1815 Congress of Vienna, which finally consolidated a federation in 1820 and resulted in the 1823 US proclamation of the Monroe Doctrine. With the approval of England, this Doctrine created a similar formation on the American continent, and what the Americans objected to in the European federation, i.e., intervention, they proceeded to exercise themselves in the Western hemisphere.

Schmitt's analysis of the League dealt with the real nature of federation. Whether or not the League was a true federation could be answered only in terms of jurisdictions. But the League's powers were unclear and even its Council had no real jurisdiction because it was composed of the great powers who had won the war, various other states and political organizations, and a group of statesmen and diplomats. It did not suspend the sovereignty of its members nor did it have any real sovereignty of its own. Although Wilson had characterized the League

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while the Weimar Constitution shunned the word "federation" altogether. Schmitt, "Reich — Staat — Bund," in Schmitt, *Positionen und Begriffe*, *op. cit.*, pp. 193-94.

9. Cf. G. L. Ulmen, "American Imperialism and International Law: Carl Schmitt on the US in World Affairs," in *Telos* 72 (Summer 1987), pp. 43-72.

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as a "new type" of organization, Schmitt derided this lack of definition. For him the key question was whether the League presupposed a legal order between states, which was in fact the question of whether or not the League was a federation. Similarly, if a European Union did not constitute itself as a true federation, then it would resemble a new commercial enterprise or even a hotel which had merely changed its name from Hôtel Impérial to Hôtel de l'Europe. By the same token, no world community could exist with the entrances and exits of various members so conspicuous in the League of Nations.[10]

A legal institution such as a federation is only possible if the political situation is considered "normal" by all its members, meaning that there is a *guarantee* of the political autonomy of its members. Empty slogans about human rights and international law are no substitute for the fact that every true federation, like any political entity, must recognize a normal situation — a principle of legitimacy. As long as there was a "European equilibrium" based on a homogeneous Christian framework and as long as it reflected existing political realities, it served both to create a normal situation and to allow for peaceful change. What was important was not so much the religious character of the culture as that it was commonly accepted, even though every European nation sought to maximize its own advantages. But in the 19th century nationality replaced Christianity and became a new principle of legitimacy. A state was "normal" if state and nation corresponded. The international order was guaranteed if all states were nation-states.

National unity meant that the state was homogeneous. In the 20th century, however, this new principle led to the dissolution of the Austro-Hungarian Empire and to the "Balkanization" of Europe. According to Schmitt, this "negative" aspect of nationality also led to horrifying developments like evacuations, the exchange of whole populations, the suppression and even extermination of national minorities. Usually

10. "This coming and going reminds one of a hotel rather than a federation or any other kind of political order or community. How can such a compromise be taken seriously as a guarantee of peace and freedom in Europe or the world?" See Schmitt, "Die siebente Wandlung des Genfer Völkerbundes," in Schmitt, *Positionen und Begriffe*, *op. cit.*, p. 211. Lacking both identity and continuity, the most that could be said of the League was that it embodied "a baseless relativism," which was exemplified by the fate of Ethiopia following the Italian invasion. No federation would have tolerated the military annexation of one member state by another. Moreover, such an eventuality would destroy any true federation, as it did in 1866 when Prussia annexed the states of Hanover, Kurhessen, etc. Here Schmitt came to the heart of the matter, i.e., the guarantee of political autonomy fundamental to every federation.

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other principles were balanced with nationality, e.g., the general equality of humanity or the right of self-determination. These tended to promote a certain situation as "ideal," the presupposition being that the creation of a normal situation both domestically and internationally would lead to peace. But just as the Hapsburg monarchy was not a normal state in terms of the 19th century normative principle, since it had more than one nationality, any state not corresponding to the League's ideal in terms of "humanity" or "democracy" would not be normal either and would thus be considered a hindrance to peace. Schmitt argued that these arrangements did not seek a common ground of legitimacy but were rather attempts to legitimate the *status quo*.

"The Constitutional Theory of the Federation"

Schmitt's treatise begins with "Relations Between States" because federations concern both internal and external order and the relation between them. A plurality of autonomous political entities may be regulated by a treaty, but such an international arrangement does not amount to a constitution. Adjustments to federal legislation are a constitutional obligation of member states rather than a matter of relations between states because they are not only allied but federated: "Consequently, such adjustments neither change nor destroy the identity of the member states. A given federal mandate administered within member states is the same as that administered in the federation as a whole, meaning that there is no qualitative distinction but rather a general continuity." This follows from the fact that a "true constitutional contract is always a status treaty," which presupposes that each of the contracting parties has a political status and that a federation establishes a new collective political status. By contrast, a mere treaty between states may establish an alliance but not a constitution, and it does not fundamentally change the political status of the contracting parties.

The core of Schmitt's argument is found in the section on "The Legal and Political Antinomies of Federation." The first antinomy is that while the goal of federation is self-preservation, in particular the safeguarding of the political independence of every member state, membership in a federation requires that every member state yield its right of self-preservation to the federation. Its solution "lies in that a state can forfeit the *jus belli* and any self-defence within a homogeneous community of states without denying or diminishing its will to self-preservation." Since self-preservation is only meaningful *vis-à-vis* a real enemy, and a definitive renunciation of war within a federation excludes the possibility of such enmity, political independence is not in danger.

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The second antinomy is that while every member of the federation seeks to maintain its political independence and to assure its self-determination, every federation necessarily qualifies autonomy in the interests of the self-determination of the federation through interventions. Its solution lies in that self-preservation can only be endangered or negated by an essentially *alien* interference, and since federal intervention in the affairs of member states does not constitute alien interference (because the federal constitution is part of the constitution of every member state) there is no existential threat to autonomy.

The third and most general antinomy is the most decisive because it concerns not only the nature of federation but of sovereignty. Schmitt's argument with respect to federation stands or falls in his answer to this question."The essence of federation lies in a dualism of political existence: in a bond of federally constituted collective existence and political unity and in the continuing existence of a plurality of individual political entities. Such a configuration must be expected to lead to many conflicts which must be resolved." The moment this duality — this tension between particularism and unitarism — is resolved on either side, the federation ceases to exist. The solution to the third antinomy is that a substantial homogeneity among member states excludes the possibility of existential conflict: "Federation is legally and politically possible only where there is homogeneity. Substantial homogeneity is the essential precondition of every particular constitutional provision. Where this is lacking, federation is a futile and deceptive enterprise." In a true federation there is dual existence but no division of sovereignty. Given the division of jurisdictions, any true conflict situation is decided by one side or the other. But neither the federation nor the member states play the role of sovereign *vis-à-vis* the other, for this would suspend "the federal balance" and thus destroy the federation. In the final analysis, the solution to the third antinomy is the solution to all antinomies, i.e., the homogeneity of all member states.

Since the federation is first and foremost an attempt not only to organize common defense and to find a common ground of coexistence but to guarantee the *heterogeneity* of autonomous political entities, the question of *homogeneity* is crucial. Following Montesquieu, Schmitt maintains that opposing types of state principles and political convictions cannot coexist in a federal framework: "Thus most federal constitutions explicitly guarantee *homogeneity*. The actual substance of homogeneity is presupposed implicitly; the explicit guarantee usually concerns the form of the state." Among the historical examples Schmitt mentions is

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the explicit guarantee of a "republican" form of government in both the American and Swiss constitutions. But the implicit guarantee of "substantial" homogeneity is Schmitt's real concern. Since this type of homogeneity is rarely if ever clearly spelled out, the substance may be cultural, ideological, etc. But whatever it is, Schmitt argues that no federation has any credence without it because its lack presupposes the very possibility of existential conflict or enmity which a federation by definition rules out. The conclusion is that the antinomy between heterogeneity and homogeneity is essential to federalism.

The other crucial question of federation is the possibility of secession, which was raised concretely in the American Civil War. According to Schmitt, the ideas of John C. Calhoun that provided the theoretical foundation for the secession of the South and those of his German counterpart, Max von Seydel, remain theoretically significant for a constitutional theory of the federation despite the fact that the South lost the war. The American "solution" was decided by war, which changed the constitution and destroyed the federation: "The federal elements of the constitution would no longer be concerned with the political independence of member states but only with organizational prerogatives concerning their legislative autonomy and self-administration." If the essence of federation is permanence, said Schmitt, then admission to the federation means forfeiture of the right of secession. "But if the federation is simultaneously a treaty whereby the member states do not forfeit their political independence, then they can decide themselves whether or not the federation continues to serve their needs and thus whether or not to retain or suspend the treaty." Since both these propositions are true of any "true" federation, the solution to this antimony is also found in substantial homogeneity. Following this logic, then, the American Federation might have been saved had the South been allowed to secede.

The key issue of federalism is the antithesis between federalism and democracy since the heterogeneity of independent political entities is destroyed by the homogeneity of "the people." "A *federal constitution based on a democratic foundation*, i.e., one based on the constituent power of the people, presents a particular problem, namely that the federation and its member states presuppose a substantial homogeneity. Once the feeling of national unity is strong enough, the national homogeneity of the people in the various member states of the federation easily leads to contradictions with respect to the ideas of the federal constitution." Calhoun, as Schmitt notes, was particularly bothered by the preamble

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to the Federal Constitution: "We the people of the United States." He was not wrong from the standpoint of federalism since the development of democracy within a nationally homogeneous federation "led necessarily to a unitary state."

Since the linkage between the democracy and federalism leads organizationally to "a distinctive type of state — a *federal state without a federal foundation*," Schmitt concludes that neither the Weimar Republic nor the American Republic are federations since there is only *one* political [read: sovereign] entity "whereas in a true federation — a confederation as well as a federal state — a multiplicity of political entities coexist with the federation." Following this logic, while a constitution is based on the people's constituent power, a true constitutional treaty — a federal structure — is based on the constituent power of organized political entities. While these political entities may be democratically organized internally, the federal principle must take precedence in the constitution. "The federal constitution is the final authority with respect to the limitation of the powers of the federation and of the member states. There are no rights outside the federal constitution."

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*The Constitutional Theory of Federation (1928)**

Carl Schmitt

Relations Between States

Relations between states obtain wherever political entities interact in peace or war. International law is the sum of the rules, accepted by custom or agreement, regulating relations of mere coexistence. The community of states that recognize international law does not yet establish a permanent *bond*. If it is said that international law, which is in fact only a profusion of rules differing from case to case, establishes an "international community" or a "family of nations," what is meant is merely the logical correlate of relations of coexistence. Even if one speaks of an "international order," one must not think of a closed system of norms but of something empirically given.

An international community is not a contractual relation. It is also no alliance, much less a federation. It has no particular constitution. It is the reflection of a political *pluriversum* of generally recognized rules and regulations. It denotes the coexistence of a plurality of autonomous political entities.

General and abstract norms can no more be considered the "constitution" of the international community than can "honor thy father and mother" or "love one another" be considered the "constitution" of a family. It is especially futile to label such general maxims as "right before might" or "treaties are sacrosanct" a "constitution" and falsely to attribute to the community of states that recognize international law the

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* Carl Schmitt, "Verfassungslehre des Bundes," in Schmitt, *Verfassungslehre* (1928), fifth edition (Berlin: Duncker & Humblot, 1970), pp. 363-91. Translated and edited by G. L. Ulmen.

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character of a true federation. The maxim *pacta sunt servanda*, which Alfred Verdross has labeled the "constitution" of the international community,[1] is least of all able to define an order beyond mere coexistence. International law is a function of treaties between states but not, beyond the concrete content of the treaties themselves, of the abstract maxim that treaties are valid. That would be a fictional duplication of norms, which is logically false and practically useless.[2]

Today most misunderstandings concerning international law stem from the fact that the word "international" is ambiguous and can refer to highly diverse political phenomena. A clear distinction between *interstate* and *international* relations is essential for scholarly accuracy. Unlike "international," the word "interstate" means that states — political entities which have borders that are "impermeable" and which are autonomous with respect to questions of their own political existence (and that means "sovereignty" in the sense that these questions cannot be decided by a foreign power) — confront each other. "International" goes beyond national distinctions to define a sphere of relations transcending state borders. The Roman Catholic Church is not an interstate but an international organization. "International" trade unions, cartels, etc. are such to the extent that they are not "interstate" organizations. This established distinction[3] has been often overlooked in jurisprudential treatments of the League of Nations. The League is an interstate organization; pacifism, an international movement. Insofar as pacifism is constantly confused with "international union" (in the vague sense of peace and understanding among peoples) and the latter with the League of Nations in Geneva, fantastic conclusions can result.[4]

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1. [Tr.] The Austrian jurist and diplomat Alfred Verdross (1890-1980) was a professor of international law and philosophy of law at the University of Vienna.

2. Alfred Verdross, *Die Verfassung der Völkerrechtsgemeinschaft* (Vienna: Julius Springer, 1926). For a more extensive critique of the maxim *pacta sunt servanda*, see Schmitt, *Verfassungslehre*, *op.cit.*, pp. 69-71.

3. Cf. for example, Georg Jellinek, *Allgemeine Staatslehre* (Berlin: O. Haering Verlag, 1900), pp. 116ff.

4. Arthur Wegner asked whether reporting an infraction of international law by one's own government or state officials to a foreign power is a criminal offense, such as high treason. "Everyone has the right to combat government impropriety. But in our culture this does not mean an appeal to a foreign government but to one's countrymen." According to Wegner, this means that a state secret contrary to international law should not be divulged, just as one should not divulge industrial secrets to competitors. This construction, in which the state, i.e. the political unity of one's own people, is reduced to a commercial enterprise, is immediately qualified. Hypothetically speaking, if the report is made to the League of Nations, then the decision is more difficult because today thousands oscillate "between the League of Nations and the Fatherland."

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Among contractually regulated *individual relations* between states for particular objectives are numerous types of international treaties, such as trade and extradition treaties and other agreements for the regulation of postal services, customs and trade unions, etc. These establish (often very important) obligations with a quantifiable content, but do not affect the political existence of the state as a whole. It is never a matter of life and death. Economic or other relations can be significant, but they become crucial only if they concern the state's political existence. The fact that economic ties do not constitute political communities is demonstrated by currency agreements. These cannot prevent the currency of various member countries from developing along different lines if their political fates differ.[5] Were an economic union, such as a customs union, to evolve into a political community, this would mean that the political had become decisive and that a union concerning the state's political existence had replaced contractually regulated individual relations.

An *alliance* [is] a contractual relation which commits a state to war in a particular instance. Since war affects the totality of the state's political existence and is the ultimate and decisive expression of what is specifically political, namely the friend-enemy grouping, this obligation has a special character which distinguishes it from any other regulations or agreements however valuable and important they may be. Even so, an alliance does not change the political status of a state and its constitution. The decision concerning the *jus belli* is contractually binding in a certain instance, but it is not given up or over to a third party. The deployment of this right to self-defense is contractually stipulated in the treaty establishing the alliance.

Autonomy is essential to a state's very political existence. A state which definitely abandons its right to self-defence or delegates this right to another state or authority is no longer politically autonomous. At issue here is not how to label various "semi-sovereign" formations and whether or not they are still called "states" for diplomatic reasons, but rather the state as such. At any rate, a state's political existence depends on autonomy with respect to its own defense. Consequently,

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This German professor of criminal law apparently considers Geneva analogous to Moscow and thus turns an interstate into an "international" organization . See Arthur Wegner, *Kriminelles Unrecht, Staatsunrecht und Völkerrecht*, in "Hamburgische Schriften zur gesamten Strafrechtswissenschaft" (Hamburg: W. Gente Verlag, 1925), pp. 11 and 78.

5. This was the fate of the Latin Currency Union of December 23, 1865 and the Scandinavian Currency Union of May 27, 1873 and October 16, 1875.

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concluding alliances is an act of foreign policy on the part of politically autonomous states. It does not entail any constitutional change, only the exercise of rights presupposed either explicitly or implicitly in every constitution.

The conclusion of alliances can be forbidden by constitutional law or regulated by a certain procedure.[6] But a treaty of alliance not only requires no constitutional amendment but is in fact foreseen in constitutional provisions and the result of an independent foreign policy. However, the form of the alliance can be used to change the status of one of the contracting states and require it to forfeit its *jus belli*. In this instance it establishes a protectorate.[7]

A *federation* is a permanent union based on a voluntary agreement concerning the political self-preservation of all member states. It changes the political status of every member of the federation in view of the common purpose.[8] It establishes a new *status* for every member.

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6 In Art. 45, §3 of the Weimar Constitution it is stated that "Alliances . . . require the *Reichstag*'s approval."

7. Cf. Schmitt, *Verfassungslehre*, *op. cit.*, p. 73.

8. Here the concept of federation is used without reference to the distinction between a confederation and a federal state. Unfortunately, in Germany the theoretical treatment of federation has been understood merely in terms of the difference between a confederation (concretely speaking: the German Federation founded in 1815) and a federal state (the German Reich founded in 1871). Typical are the textbooks on constitutional law by Paul Laband, *Das Staatsrecht des Deutschen Reiches*, Third Edition (Tubingen: J.C.B. Mohr, 1902) and Georg Meyers, *Lehrbuch des Deutschen Staatsrechts*, Seventh Edition, prepared by Gerhard Anschütz after the author's death (Munich & Leipzig: Duncker & Humblot, 1919). They posit apparently clear and convincing but logically curious or impossible alternatives: a confederation should be purely a matter of international law, whereas a federal state should be purely a matter of constitutional law; the one is based on a *treaty*, the other has a *constitution*; the one is a legal relation, the other is a legal subject, etc. Such convenient schematic formulae disregard the general problem and turn one interesting detail of a particular political situation into a conceptual criterion. It is obvious why after 1871 constitutional theory in Germany hypostatized this distinction into such a simplistic shibboleth concerning the earlier 1815 German Federation and thus seemed to have solved the problem of federation. Today this "solution" is no longer possible. But the impact of this epoch is still strong. Not even the admission of Germany to the League of Nations and the ensuing constitutional questions concerning the interpretation of Art. 45 of the Weimar Constitution have been able to stimulate scholarly interest in the concept of "federation." Indicative is an article by Friedrich Schiller, which treats the question of Germany's admission to the League purely as a "legal question" and ignores the concept of "federation." Cf. "Der Eintritt des Deutschen Reiches in den Völkerbund als Rechtsfrage," in *Archiv des öffentlichen Rechts*, Neue Folge, Vol. 11 (1926), pp. 41-70. For this reason he dismisses my exposition of this concept, claiming that his is an "apolitical" investigation. Cf. Carl Schmitt, "Die Kernfrage des Völkerbundes," in *Völkerrechtsfragen*, Vol. 18 (Berlin: Ferd. Dümmler Verlagsbuchhandlung, 1926). The basic constitutional problem — that a true constitutional treaty is an act of constituent power — remains unexplored.

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Joining the federation always entails a change in the *constitution* of the entering member. Even if there is no change in the wording, much more important is that the constitution understood in a positive sense — in terms of the concrete content of fundamental political decisions concerning the state's political autonomy — is changed fundamentally. Thus a federal treaty is a special type of agreement. It is voluntary insofar as the decision to join the federation is a prerogative of the state's free will. But it is not voluntary in the sense of a contract regulating individual relations, which can as well be terminated at will. A state which joins a federation becomes an integral part of a larger political system. Thus a federal treaty is always a *status* contract between states.

The Concept of Federation

A federation affects the total political existence of every member state and integrates it as a unit into a politically existing union. Thus a federal treaty entails much more than particular obligations. If the federal constitution limits the federation's "jurisdiction" by stipulating that it is only entrusted to pursue specifically enumerated tasks, that is a technical question of the presumption of responsibility and concerns the division of powers within the existing federation (as, for example, in §5 of the 1849 Frankfurt Constitution). It does not appertain to the entirely different question of the fundamental *presuppositions* of federation and the problem of sovereignty.

The goal of a federal treaty is not a temporary regulation but a *permanent order*. This follows directly from the concept of *status* because a particular regulation, which is both measurable and terminable, cannot ground any *status*. Every federation is thus "perpetual": it is meant to *endure*.[9] A federal treaty is a constitutional treaty. Its institution is an act of constituent power. Its content at once constitutes the federal constitution and is part of *the constitution of every member state*.[10] The goal of a

9. Historically, federal treaties always speak of durability. The German Federal Act of 1815 stated that the members agreed to a "permanent federal union"; the Viennese Act of 1820 was said to "indissolubly join the bond which unites the whole of Germany in harmony and peace" and Art. V of this act stated: "The federation is established as an indissoluble union and therefore no member is free to withdraw." The introduction to the Constitution of the North German Federation of July 26, 1867 spoke of an "eternal federation." Similarly, the Constitution of the German Empire of April 16, 1871 said that the King of Prussia established an "eternal federation" in the name of the North German Federation and the reigning prince of the South German states. Durability as a characteristic of federation is also emphasized by, e.g., Samuel Pufendorf, *De jure naturae et gentium libro octo* [1672] (Oxford: Clarendon Press, 1934), Book VII, Chapter 5, §18.

10. Numerous states of the 1815 German Federation included in their constitution

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federation is to safeguard the political existence of all the participating members. Even if not explicitly stated, a federal constitution contains a *guarantee* of the political existence of all member states, while they in turn guarantee the political existence of each other and the federation. In any case, the political *status quo* in the sense of political survival must be guaranteed *within* the federation. Normally there is also a guarantee of territorial integrity. No part of the territory of any member state may be appropriated and even less may its political existence be abrogated without its consent. This does not mean that any guarantee of political existence or territorial integrity amounts to a federal treaty. But it does mean that every federation contains this guarantee of political autonomy and territorial integrity. The guarantee follows from the goal of self-preservation and the concept of permanence basic to federation.

Externally a federation protects its members against war and other threats. *Internally* it entails a lasting *pacification* — the "public peace" mentioned in old treaties dating back to the 11th century. It is the "unconditional duty of every individual state to settle all disputes between states according to the law by which they are regulated or authorized (i.e. the federal constitution)."[11] It follows that the most essential change in the status of the members of the federation concerns their *jus belli*. Unlike an alliance, in which this right is contractually stipulated for a particular instance, the *casus foederis*, self-defense within a federation is forfeited in the federal contract. War is no longer possible between member states. As long as the federation exists, the only possibility is

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a prominent statement concerning their membership in the federation. Thus the Grand Duchy of Baden (Constitution of August 22, 1818, §1): "The Grand Duchy is part of the German Federation." Likewise, with the December 17, 1820 Constitution of the Grand Duchy of Hesse, §1. The same goes for the kingdom of Saxony, the Constitution of September 4, 1831, §1, and especially detailed and striking, the Kingdom of Württemberg, the Constitution of September 25, 1819 §3: "The kingdom of Württemberg is part of the German Federation: thus all organic resolutions of the federal assembly which concern either constitutional conditions in Germany or the general conditions of German citizens are also binding in Württemberg. However, the constitutional assistance of the state assembly applies with respect to the means for the fulfillment of the commitments hereby established." If there are such statements in the constitutions of individual states, in line with the 1919 Weimar Constitution, such as Art. 1 of the Prussian Constitution of November 30, 1920 ("Prussia is a republic and a member of the German Reich"), they do not have the same meaning because Germany today [1928] is no longer a federation.

11. Albert Haenel's elaboration of Art. 76, §1 of the Constitution (*Deutsches Staatsrecht* [Leipzig: Duncker & Humblot, 1892], p. 577) is true of every federation regardless of the distinction between a confederation and a federal state. [Tr.: Cf. Friedrich Manfred, *Zwischen Positivismus und materialem Verfassungsdenken: Albert Haenel und seine Bedeutung für die deutsche Staatsrechtswissenschaft* (Berlin: Duncker & Humblot, 1971)].

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federal enforcement against individual members. If it comes to a war, the federation no longer exists in its previous form.[12]

There is *no federation without federal intervention* in the affairs of member states. Because the federation is politically autonomous, it must have *a right of supervision* so it can make decisions with respect to the maintenance, preservation and security of the federation and, if necessary, intervene. Every federation has a *jus belli* and can pursue war. There is *no federation without the possibility of a federal war*. Yet it is another question whether the federation has an exclusive *jus belli* externally, i.e. with respect to non-members. The federation protects its members against external threats, but individual members may be permitted to wage war against non-members. Even so, the war of a member against a non-member can easily endanger the federation. Forfeiture of the *jus belli* with respect to non-members is nevertheless not an attribute of

12. The 1815 German Federation was dissolved in 1866 in the war between Prussian and Austria. On May 28, the Austrian government broke off negotiations with Prussia: on June 10, Prussian troops under [General] Manteufel marched into Holstein. Then on June 11 Austria petitioned the *Bundestag* for the mobilization of federal troops (exclusive of the Prussian Corps), a motion that Prussia declared illegal but which was accepted on June 14. However one wants to judge the "question of guilt," the Prussian Declaration of June 14, which followed acceptance of the Austrian Resolution, contains an interesting discussion of what mobilization and war mean within a federation: "Federal law recognizes only the possibility of enforcement with respect to member states for which certain forms and provisions are stipulated: mobilization of the federal army against a member state is as alien to the military provisions of the federal constitution as is action of the federal assembly against the member state to the constitutional norms of enforcement." "After Prussia's assumption of protection, which the federation had guaranteed its members, was shaken profoundly by the fact that the most powerful member of the federation . . . mobilized against Prussia for the sake of autonomous action, the royal government had to acknowledge that the external and internal security of the federation, which according to Art. II of the Federal Agreements was the primary objective, was already greatly endangered." "Given that a *declaration of war against a member of the federation was impossible according to federal law* . . . the royal cabinet acknowledged the dissolution of the federation." Cf. the documents published in *Nouveau Recueil générale de traitês et autres actes relatifs aux rapports de droit international*, Edited by Georg Friedrich von Martins and continued by Heinrich Triepel, Third Edition (Leipzig: Librairie Dieterich, 1908-), Vol. XVIII, pp. 310ff and Karl Strupp, *Documents pour servir à l'histoire du droit des gens*, Second Edition (Berlin: H. Sack Verlag, 1923), Vol. I, pp. 32ff. Haenel's critique of the Prussian interpretation that it was "without legal justification" misses the basic problem of every federation. See Albert Haenel, *Die vertragsmassige Elemente der deutsche Reichsverfassung* (Leipzig: H. Haessel Verlag, 1973). If a federation is not dissolved by war, then one of the contending parties succeeds in imposing the view that war is merely a federal *enforcement*, as did the North with respect to the South at the end of the American Civil War and as Austria might have succeeded in doing had it defeated Prussia. On ending federations through war between member states, see Pufendorf, *op.cit.*, §21.

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federation as such, while the right to self-defense and war by member states is forfeited only insofar as it is conditioned by membership in the federation.

The Legal and Political Antinomies of Federation

The first antinomy: The goal of federation is self-preservation, i.e. safeguarding the political independence of every member state. However, membership in a federation constitutes a qualification of this independence because it leads to a renunciation of the *jus belli* — the essential means of self-defense. Thus this antinomy concerns the *right of self-preservation* of every member state.

The second antinomy: Every member of the federation seeks to maintain its political independence and to assure its self-determination through the federation. In the interests of the security of the union, however, the federation cannot ignore the internal affairs of its members. Every federation leads to *interventions*. Every true federal enforcement is such an intervention, which suspends the autonomy and destroys the impermeability of the member state against which this action is directed. Thus this antinomy concerns the *right of self-determination* of every member state.

The third (and most general) antinomy: Irrespective of the distinction between a confederation and a federal state, every federation exhibits collective political existence. This distinguishes a federation from an alliance. In a federation two types of political existence obtain — that of the federation and that of the individual member states. Both must coexist so long as the federation is desired. Neither should supersede the other; neither should be subordinate to the other. The federation consists only in this existential equilibrium. A number of variations is possible. The most extreme cases are those in which either the federation dissolves and only individual states remain or individual states blend into a single state. The essence of federation lies in a dualism of political existence: in a bond of federally constituted collective existence and political unity and in the continuing existence of a plurality of individual political entities. Such a configuration must be expected to lead to many conflicts which must be resolved.

The question of sovereignty revolves around the resolution of an existential conflict. There are some ways to settle and mediate disputes peacefully. But when a *decision* is required (and only this case is treated here), political conflicts cannot be resolved by legally established procedures. Here the question has nothing to do with normative regulations

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and legal interpretations. As soon as the case is settled by a recognized and binding norm, it is no longer a true conflict. However, if there is no such regulation, then there are no legal procedures. A tribunal without firm, previously established general norms is no true court. Either it is an agency of the federation or of one or more member states. In any case, it is always partisan. A "bipartisan agency" confronting a true political conflict is also inconceivable. If there is equal representation on both sides, the members are dependent on the instructing parties in the absence of binding laws. A decision is then only possible if one or more members disavow their own parties. Alternatively, a decision is possible if an agency stands above the parties, not by virtue of any law which justifies its independence (i.e. not by norms valid for both sides) but by its very existence. In this case, the agency is sovereign. It is no longer a tribunal but an autonomous political power and consequently also concerned with its own self-preservation. No matter how many disagreements, differences of opinion and disputes among men of good will, an existential conflict can never be settled in this manner. Every politically autonomous people necessarily decides questions of its own political existence and must do so at its own risk. Whether or not an existential situation exists can only be decided by a politically autonomous people.

This existential conflict is always possible wherever there are politically autonomous entities. Thus the question of sovereignty, i.e. the ultimate existential decision, always remains open. To address this difficult question by distinguishing between sovereign and non-sovereign states and (in line with the prevailing doctrine of German constitutional law)[13] to maintain that individual states are sovereign in a confederation and the totality in a federal state only complicates matters and is no solution. Given the proper understanding of an existential conflict and of the essence of sovereign decision, it is no real answer. It only means that in a conflict situation a confederation dissolves while a federal state does not. In this sense, a confederation loses its collective political will and is reduced to a "relation" between states (although, oddly enough, like the German Federation it can pursue wars). By contrast, a federal state becomes a sovereign state and discards its federal character because the member states have lost their true political existence and are left only with some

13. Paul Laband, *Das Staatsrecht des Deutschen Reiches*, Fifth Edition (Tübingen: J.C. B. Mohr, 1911-1914), Vol. I, pp. 91ff; Albert Haenel, *Studien zum deutschen Staatsrechte*, Two Volumes in One (Leipzig: H. Haessel Verlag, 1873-1888), Vol. I, p. 221; cf. also Meyers/Anschütz, *op.cit.*, p. 46.

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legislative functions. What is essential to a federation, however, is that the question of sovereignty between the totality and the member states always remains open — as long as the federation and the member states continue to coexist. If only the federation is sovereign, then only the totality exists politically. Then there is a sovereign unitary state and the question of federalism is simply circumvented.

This third antinomy is based on the fact that the coexistence of independent entities within the framework of an over-arching political totality must appear as a contradiction. Seydel[14] quotes approvingly the maxim of a Frenchman (Léon) to the effect that there cannot be two entities because the essence of unity is precisely to be one: "*Il ne peut y avoir deux unités, car l'essence de l'unité c'est d'être une.*"[15] That is true for the conflict situation, despite the subtle distinctions of sovereign and non-sovereign "states." The contradiction is evident in all essential conflicts within a federation and in all the famous federal disputes, as long as no political decision has been made to suspend the federal balance. This is how basic problems were discussed in the US before the Civil War. At that time John C. Calhoun articulated his famous theses,[16] which Seydel quotes.[17] They remain theoretically crucial for a constitutional theory of federation and are not made irrelevant by the fact that the Southern states were defeated or that under Bismarck's constitutional system German jurisprudence was content with a few meager antitheses and pseudo-distinctions of state and sovereignty, a confederation and a federal state. Both Calhoun's and Seydel's doctrines deal with key concepts of the constitutional theory of federation. The task here is not to prove

14. [Tr.] The German jurist Max von Seydel (1846-1901) was professor of German and Bavarian public law in Munich. He is best known for his part in the controversy concerning the fundamental nature of the German Empire under the Bismarckian Constitution. In his investigation of the concept of the federal state in Germany he applied the view of John C. Calhoun that "Sovereignty is an entire thing; to divide it is — to destroy it." He particularly attacked the ideas of Haenel and others as logically inconsistent with the essentially indivisible and unlimited nature of sovereignty. He held that there can only be unitary states; that Germany, like the US and Switzerland, was a federation of states that had not renounced their sovereignty. He thus became the leading advocate of states rights in Germany. Although his opponents won out in the controversy, Seydel nevertheless exerted an immense influence on the theory of sovereignty in federalism. The controversy influenced the discussion of the *Reich-Länder* problem after WWI.

15. [Alphonse F. M. Léon, *La convention monétaire du 23 Decembre 1865 et uniformité des monnaies* (Paris: Gauthier-Villars, 1868)] Cf. Max von Seydel, "Zur Lehre von den Staatenverbindungen," in *Staatsrechtliche und politische Abhandlungen* (Freiburg and Leipzig: Akademische Verlagsbuchhandlung von J.C.B. Mohr [Paul Siebeck], 1893), p. 19.

16. *The Works of John C. Calhoun* (New York, D. Appleton & Co., 1851-1856).

17. Seydel, "Zur Lehre von den Staatenverbindungen," in Seydel, *Staatsrechtliche und politische Abhandlungen*, *op. cit.*, p. 15.

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that either the US or Germany today is a "federation," but rather to pose the question (without preconceived notions and phraseology) whether today there is some sense in which either can still be called a federation or whether only the remnants of an earlier federation have been deployed organizationally in the construction of a unitary state or whether true federal elements have been transformed gradually into the organizational elements of a unitary state.

Calhoun's most important theses deal with states rights. In his view these are limited only to the extent explicitly stated in the federal constitution, whereas the presumption of [otherwise] unlimited rights favors the member states. This presumption is not an interpretative rule for a particular law but must be understood in a way similar to the monarchical principle as the logical formula for sovereignty. This doctrine is thus incorrect because it makes it appear that the member states are sovereign and the federation is not. It would be equally incorrect to maintain the opposite. Calhoun, however, goes further and ascribes to member states the right to *nullify* federal laws and acts. Then member states would have the power to refuse to recognize and administer a federal act if in their view it overstepped federal constitutional authority. In such a case the provisional decision is made by the legislatures of the member states. Three-quarters of the Congress would decide on the constitutionality of the matter. But even a majority voting for constitutional amendments cannot destroy the contractual foundations of the federation. If a member state sees its security threatened and decides that federal powers have been misused, then it has a right to renounce the federal union — it has the right of *secession*.

Calhoun's theses provided the theoretical foundation for the secession of the Southern states which led to the Civil War. The fact that the war ended with the defeat of the South made this argument irrelevant in the US. "Henceforth the attempt to resist by violence the administration of the nation's laws or to take themselves out from under the supremacy of the national government is rebellion on the part of those who so act, and that therefore neither nullification by any state government nor secession on the part of any state is permissible under the political system of the United States; . . . that . . . the Supreme Court is the final interpreter of the meaning of the Constitution . . . . So quickly does war act as the solvent of the difficulties that had perplexed legislatures and courts and the people for two generations."[18] However, this

18. Nicholas Murray Butler, *Building the American Nation: An Essay of Interpretation* (New York: Scribners, 1923), p. 266.

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"solution" only meant that the constitution was changed fundamentally, that the federation ceased to exist, and that this was decided by war. The possibility of an existential conflict between the Union and one or more member states was subsequently excluded; the federal elements of the constitution would no longer be concerned with the political independence of member states but only with organizational prerogatives concerning their legislative autonomy and self-administration.

Secession addressed the core of this fundamental problem of federation: if the essence of federation is permanence, then admission to the federation means forfeiture of the right of secession. But if the federation is simultaneously a treaty whereby the member states do not forfeit their political independence, then they can decide themselves whether or not the federation continues to serve their needs and thus whether or not to retain or suspend the treaty. This is then the right of secession. Either the federation endures and neither secession nor revocation are recognized or the independent political existence of the member states remains and with it the possibility of secession and revocation, if only in the most extreme cases. At any rate, nothing could be more contradictory than the concept of a permanent, collectively organized political unity of states which do not forfeit their political independence in the process.

The solution to the antinomies of federation lies in that every federation is based on an essential presupposition — the *homogeneity of all member states*, on a substantial sameness of the member states that brings about an essential consensus which in turn precludes the possibility of the extreme conflict within the federation. As with democratic homogeneity,[19] this may refer to nationality, religion, class, etc. With the exception of the USSR, today the basis of federation rests primarily on national identity. In addition, there is also the homogeneity of the organizing political principle (monarchy, aristocracy or democracy). Disagreements concerning basic questions, such as those between the North and the South with respect to slavery in the US, must be decided in order not to endanger homogeneity.[20]

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19. Democratic homogeneity is thus a *substantial* homogeneity because all citizens partake of this substance, can be treated equally, have the same voting rights, etc. The substance of homogeneity, however, can differ over time and depending on the various democracies in question. Schmitt, *Verfassungslehre*, *op. cit.*, p. 228.

20. Here too Montesquieu provides theoretical acumen when he writes that "a confederate Government ought to be composed of States of the same Nature, especially of the republican Kind." See Baron de Montesquieu, *The Spirit of the Laws*, Translated by Thomas Nugent (New York: Hafner, 1949), Book IX, 2, p. 127. The reason for this is that,

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The solution of the first antinomy lies in that a state can forfeit the *jus belli* and any self-defense within a homogeneous community of states without denying or diminishing its will to self-preservation. For war attains its meaning by virtue of the fact that it is conducted in the interest of self-preservation against a real *enemy*. The enemy is something essentially other and alien. The concept embraces the most extreme intensification of otherness, which in a conflict situation threatens one's own political existence. A definitive renunciation of war is thus meaningful only with states which have excluded the possibility of such enmity. However, this is not simply a matter of good will. The best will is powerless when

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while the spirit of monarchy is bellicose and leads to expansion, the spirit of a republic is peaceful and moderate (here Montesquieu had in mind the aristocratic republic). In any case, opposing types of state principles and political convictions cannot coexist in a federal framework. Thus most federal constitutions explicitly guarantee *homogeneity*. The actual substance of homogeneity is presupposed implicitly; the explicit guarantee usually concerns the form of the state. Accordingly, Art. 44, §4 of the 1787 US Constitution guarantees a republican form of state. The 1815 German Federation contains a guarantee in Art. 13 of the Vienna Federal Act in which constitutions based on estate assemblies were foreseen. In Art. 57 of this act, concluded in 1820, the monarchical principle was explicitly proclaimed to be the common form of state for all members (the small number of free cities were here ignored as much as in the 1867 North German Federation and the 1871 German Reich). Of particular interest with respect to Art. 13 is a letter by Gentz dated February 16, 1817 or 1818 in which it is said that if indigenous corporate systems coexist with purely representative systems within the federation there will be confusion and dissension: "Such a state of affairs is certainly neither intended nor desired in the wording of federal agreements, nor is it considered possible. It is irreconcilable with the concept of unity, order and peace in Germany." See *Briefe von und an Friedrich von Gentz*, Edited by Friedrich Carl Wittichen (Munich: R. Oldenbourg Verlag, 1909-1913), Three Volumes in Four, Volume III, pp. 384-85. The 1848-49 Frankfurt Constitution stipulates in Art. XII of the Basic Rights constitutional homogeneity including certain minimal rights of popular representation; according to §195, every change in the form of government in a particular state is dependent on the approval of the imperial authority; §130 spells out federal Basic Rights as the norm for all the constitutions of the individual states. The 1871 German Constitution contains no such explicit guarantee, although it is similarly based on a federation of monarchical states. . . . Art. 6 of the Swiss Federal Constitution of May 29, 1874 stipulates: "The cantons are obligated to seek a federal warranty for their constitutions. The federation assumes this warranty insofar as: a) the cantonal constitutions contain nothing contrary to the prescriptions of the federal constitution; b) they assure the exercise of political rights according to republican (representative or democratic) forms; c) they have been adopted by the people and can be revised if demanded by an absolute majority of the citizens." The Weimar Constitution guarantees homogeneity on the basis of a constitutional [read: liberal] democracy with parliamentary government and thereby excludes both monarchy and a proletarian soviet system. Art. 17: "Every state must have a republican constitution. Popular representation must be chosen by general, equal, direct and secret ballot of all male and female citizens according to the basic propositions of proportional representation. State government requires the legislature's vote of confidence."

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confronted with the concrete reality of heterogeneous peoples and conflicting interests and beliefs whose existential particularity is articulated politically in the state. Only if there is a substantial homogeneity, an existential affinity, as in states with a nationally homogeneous and like minded population, is it reasonable to assume that enmity can be permanently precluded. Only in such a case can the *jus belli* be forfeited without simultaneously forfeiting the independence and political identity of the state. If every member state also forfeits the *jus belli* against non members in favor of the federation's exclusive right, then the enemy of one is the enemy of all and of the whole federation. Accordingly, the federation can have no enemy which is not at the same time also the enemy of every member state.

The solution to the second antinomy lies in that the will to self-preservation implicit in all political entities can only be endangered or negated by an essentially *alien* interference. Thus federal intervention in the affairs of member states does not constitute alien interference. It is possible and tolerable because the federation is based on the essential homogeneity of its members. For example, in the 1871 German Reich the constituent powers of the individual monarchical states were enhanced by the fact that the federal constitution precluded the introduction of a democratic republic.

The solution to the third antinomy lies in that a substantial homogeneity among the member states excludes the possibility of existential conflict. Federation does not exclude individual sovereignty. But because questions of political autonomy can arise in different areas, especially foreign and domestic policy, it is possible that certain decisions involving foreign policy, for example, fall within the jurisdiction of the federation, whereas other decisions, such as public safety and order, fall within the jurisdiction of a member state and thus remain its prerogative. This does not mean a division of sovereignty; it merely follows from the dual existence of the federation and its members. There is no division because the true conflict situation that settles the question of sovereignty is a matter of political survival, and jurisdiction over such situations falls *entirely* to one side or the other. The simple either-or implicit in sovereignty remains. Authors like Seydel, who emphasize the indivisibility of sovereignty, are quite correct. Given substantial homogeneity, however, a decisive conflict cannot arise *between the federation and its member states*. This means that neither the federation nor the member states play the role of sovereign *vis-à-vis* the other. Federation is based on the factual impossibility of existential conflict. But this state of affairs cannot

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be brought about by mere agreements, wishes and entreaties. To assume that would be hollow and deceptive (if not fraudulent) as long as there is no homogeneity. Federation is legally and politically possible only where there is homogeneity. Substantial homogeneity is the essential precondition of every particular constitutional provision. Where this is lacking, federation is a futile and deceptive enterprise.

The Legal Character of Federation

Every federation is a politically autonomous entity with an independent *jus belli*. But a federation has no constituent power of its own: it is based on a treaty. Contingent jurisdiction over revisions of the federal charter is not a constituent power. Every federation is a subject of international as well as constitutional law. It is an independent agent in *international law* for the simple reason that it necessarily assumes a *jus belli* and that the member states either in whole or in part voluntarily forfeit their *jus belli*. This last is no empty gesture but a vote of confidence in the federation. Any further conclusions with respect to the full authority of a federation in *international* relations are matters of organization.[21]

A federation is a subject of *constitutional* law because it is the agent of its own constitutional authority *vis-à-vis* its member states: relations between the federation and its member states are constitutional in nature. Not

21. The federation can have an independent *right of diplomacy*, as it did in the 1815 German Federation, whereby it *recognizes* foreign governments in international relations (e.g. the decision of the German Federation of September 23, 1830 concerning the recognition of the accession to the throne of Louis Philippe or that of October 4, 1832 concerning the recognition of Prince Otto of Bavaria as the king of Greece). The impossibility of a separate and independent recognition of foreign governments by individual member states is also presumed for the British Empire. Concerning the recognition of the Russian Soviet Government by the English Government and the validity of this recognition for all entities constituting the British Empire, see Karl Heck, *Der Aufbau des Britischen Reiches (Verhandlungsbericht der Reichskonferenz von 1926)* (Berlin and Leipzig: Walter de Gruyter, 1927), p. 35. Concerning the fact that a *declaration* of war by or against Great Britain involves the whole of the British Empire, see Werner Muckenberger, *Die britische Reichskonferenz und das Verfassungsproblem* (Leipzig: R. Nocke Verlag, 1927), pp. 75 and 94.

If the League of Nations were a true federation it would have a *jus belli*. Here too it is apparent that the question of the nature of a federation is the central problem of the League of Nations. Without a clarification of this problem all further considerations move in a vicious circle as soon as fundamental issues are raised. Indicative of this quandary is the claim that "as a subject of international law the League also has the right to declare war and conclude peace." The fact of the matter is precisely the opposite: If the League of Nations has a *jus belli*, it is in the fullest sense a subject of international law. It can have a *jus belli* only if it is a true federation. Cf. *Die Satzung des Völkerbundes*, with comments by Walther Schücking and Hans Wehberg, Second Edition (Berlin: F. Vahler Verlag, 1924), p. 118.

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only is the status of every member state defined externally in a specific sense by its membership in the federation, this membership has direct constitutional consequences. There is no federation that is nothing more than an international agent for its members. Two provisions are sufficiently indicative: Every federation is defined as a constitutional agent through federal enforcement and federal intervention.

Federal *enforcement* is necessarily the federation's business. As a constitutional authority the federation confronts the object of enforcement and issues orders to the member states, even if the federal constitution carefully attempts to circumscribe the right to issue direct orders. The very notion of federation presupposes that federal enforcement is not an international but a constitutional matter. Otherwise war would result and destroy the federation. The concept of federal enforcement thus requires a constitutional foundation.

Federal *intervention* also entails constitutional procedures and actions. Even if the intervention is directed to the member state as a whole, it nevertheless affects the internal affairs of the state and has a constitutional rather than an international legal character within the federation. When the question of the abolition of slavery arose in the US, the South could not simply reject discussion of this issue — as long as it wanted the federation to continue — with the argument that it concerned only the individual states, that it was merely a "domestic affair." The South could claim the right of secession (whether or not it was a question for the South to decide) and declare the federal contract void, as it did try to do. But as long as the federation existed, the South could not at the same time reject federal intervention as if it were a matter of international law. It is still true that in international law states confront each other externally as closed political entities that are impermeable or (to use the banal American expression) "water-tight," whereas within a federation such is not the case.

This constitutional character of federation leads to the conclusion that *federal law* always takes precedence over *state law* in any official dealings between the federation and member states —even if only in narrowly defined areas.[22] Adjustments to federal legislation are a *constitutional*

22. Disregarding the fact that today Germany is no longer a federation and that Art. 13 of the Weimar Constitution obtains its particular meaning through §2 (settling differences of interpretation), the provision of §1 "Reich law supersedes state law" expresses the obvious. The curious wording of Art. 13 derives from German legal history. Here an old phraseology applying to the relation of legal and territorial law to state law was transferred to the completely different constitutional relation between a federation and its member states and used to explain something quite different, i.e.

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obligation of member states. They are thus not a matter of relations between separate states but rather between states which are not only allied but "federated." Consequently, such adjustments neither change nor destroy the identity of the member states. A given federal mandate administered within member states is the same as that administered in the federation as a whole, meaning that there is no qualitative distinction but rather a general continuity.

Every federation presupposes *federal territory*. The federation is always territorially limited *vis-à-vis* other territorially contained political entities. Federal territory consists of the areas of the member states. In addition, a federation can have dominion over lands such as a federal colony, but this has a quite different meaning. Only the areas of member states necessarily constitute federal territory, whereas other areas such as "imperial lands" or federal colonies do not necessarily belong. If several states have joint dominion over a territory, this does not make them a federation and does not constitute "federal lands." Otherwise every condominium [i.e. every area under joint or multiple sovereignty] would be a federation, which is certainly not the case.[23]

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that federal laws immediately apply to state officials and subjects without further state legislation. The legal significance here is that this answers the question of whether federal laws become valid and immediately effective for all officials and subjects of member states or whether they must be mediated. According to Art. 13 such mediation is not required. Even if state legislation would be necessary, it would still be required by the federal constitution, provided the law was enacted in a formally correct manner. Yet this internal federal matter is legally something completely different from one based on an international treaty whereby a "transformation" into constitutional law is required to force internal state compliance with international obligations. Supersession within a federation is only one among various types. Directives to autonomous corporations within a *state*, e.g. religious organizations, can also be promulgated, and federal law can become binding within particular corporate bodies. Adjustments can become technically necessary for a large administrative apparatus if for organizational reasons an order issued is not directed to those officials in charge of enforcement but takes a circuitous route. Often the constitutional situation is such that something is not directly ordered but demanded, not annulled but insisted upon. For example, according to Art. 48 of the Weimar Constitution the *Reichstag* can demand that the president revoke his declaration of a state of exception, but the president in turn also cannot issue a direct order. A case of a true legal transformation obtains when an international obligation between states requires intrastate actions, compels intrastate obligations, etc. To speak of a "supersession" here would be inaccurate because there is in general no identity and continuity between international obligation and intrastate enforcement. Supersession does not transform an international obligation into a constitutional relation but provides a new basis interpreted by Triepel as a new source of law whereby something qualitatively new and different comes into being. Cf. Heinrich Triepel, *Völkerrecht und Landesrecht* (Leipzig: C.L. Hirschfeld Verlag, 1899).

23. Typical of federal areas in the second sense would be the lands comprising the

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The League of Nations is not a federation. It has neither territorial sovereignty nor federal authority over the member states. It also has no dominion over federal territory in the second sense. On the basis of the Versailles Treaty, the political fate of the Saar[24] is subjected to a provisional regulation involving the administration of interstate institutions such as the League's Council. That is no League sovereignty, and the Saar is no more an area of the League than are its people citizens of it. The League Mandates [such as the former German colonies] are (according to Art. 22 of the League Charter) not ruled by the League but are in part protectorates, in part colonies ruled by the mandating states. Least of all can one say that the League is "sovereign." It is not a federation but an interstate relation and consequently cannot have sovereignty even if interstate functions and powers are assigned to some interstate organizations.[25]

Federal Institutions and Jurisdictions

A federation must have a representation. This is the federal assembly composed of those spokesmen of the individual political entities which constitute the federation. If a more limited *collegium* exhibits these same attributes, this already signals the transition to a unitary state. The organization of federal institutions and jurisdictions in general conforms to a simple scheme: the full assembly of all member states, a narrower (directing or even representative) *collegium* as "counsel" or

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United Netherlands before their unification into a state (1579-1795) and the areas ruled by the Confederation of American States (1778-1789) before the founding of the Union. With the German Reich (1871-1918) the imperial province of Alsace-Lorraine is not an example of an area ruled by a federation since it was federal land in the true sense, just as its population had citizenship in the federation. This, however, is an ambiguous example.

24. [Tr.] The region in the valley of the Saar River between France and Germany that came under administration of the League of Nations after WWI.

25. Wehberg has characterized the Mandate areas as regions falling under the territorial sovereignty of the League in order to define thereby a federal area and ascribe to it the political autonomy of a state. See Hans Wehberg, "Besitzt der Völkerbund ein eigenes Territorium?" in *Völkerbundsfragen* (June 1, 1926), pp. 92-94. He points to the above examples in order to argue that a federation can have a "collective" territory and tries to construe the Mandate areas as analogous to the Dutch *Generalitätslande*. The circle in which these ideas move is obvious: if the League were a true federation it could also have dominium over areas (quite aside from the above-mentioned distinction between various types of "federal areas"). But the question is whether the League of Nations is a federation. If it is not a federation, then the (still very problematic) control of the League over states administering Mandate areas cannot be construed as the territorial sovereignty of a federation. Here the question of what constitutes a true federation turns out to be the crux of the League of Nations.

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"committee," and an agency for administration and enforcement of federal decrees. As long as the federation exists, its will is one with every member state. Even if federal decrees are the result of the unanimous decision of all members — not only those present at the time of the vote — and none can be outvoted, there is an essential difference between a federal decision and the unanimous decision of an international conference because federal decisions do not require any particular ratification by member states: each is constitutionally and directly bound (because the federal constitution is part of the constitution of every member state).[26]

The question of the federation's authority to direct orders to member states must be distinguished from that of the direct constitutional obligation of member states to the federation. The latter concerns the arrangements by which federal law supersedes state law irrespective of whether direct jurisdiction has been provided in the constitution. Even if this has not been done, federal precedence is an internal constitutional consequence — not one of international agreements which must be translated into state law. A federation always has certain powers: externally, an independent *jus belli*; internally, federal control (with the possibility of enforcement or intervention). Further powers are a function of the federal charter's constitutional specification, which always becomes part of the constitution of member states. Whether something falls within the jurisdiction of the federation or of the member states is also subsumed by this specification and is a function of how a given federation is organized.

It is often alleged to be a general principle of federal constitutional law that the federation has only those powers explicitly stated, whereas all other powers remain with the member states. Thus the powers of member states remain primary.[27] But in this general sense the allegation is untenable because the "presumption of unlimited powers" has a

26. The decisions of the League of Nations are binding on all member states without special ratification. In this respect the League resembles a federal organization. However, since it is not a federation, an immense confusion results. Jahrreiss has discussed the constitutional side of federalism in relation to the League's decisions. Cf. Hermann Jahrreiss, *Völkerbundsmitgliedschaft und Reichsverfassung*, Leipziger Antrittsvorlesung (Leipzig: Weicher Verlag, 1926). See also Dietrich Schindler, *Verbindlichkeit der Beschlüsse des Völkerbundes* (Zurich: Schweizerische Vereinigung für Internationales Recht, 1927). The relation between the contradictory organization of the League's institutions and the concept of federation remains to be clarified.

27. Cf. *Die Verfassungsgesezte der Republik Deutschösterreich*, Edited with a historical overview and critical commentary by Hans Kelsen (Vienna and Leipzig: Franz Deuticke, 1919), pp. 105-08.

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double meaning and can have various functions: first, to decide the question of sovereignty; second, to have an interpretative principle for specifying jurisdiction. It ultimately concerns the statutory standardization of the federal constitution. Only in this case is there the further question of whether the explicit allocation of enumerated powers is limiting (because every enumeration includes a limitation according to the maxim *enumeratio ergo limitatio*) or further powers can be developed *implicite* from those enumerated.[28]

The federal constitution is the final authority with respect to the limitation of the powers of the federation and of the member states. There are no rights outside the federal constitution. Triepel, however, interprets the "written constitution" only in terms of constitutional law. In the literature dealing with the Bismarck Constitution this antithesis is recognizable in all controversies concerning the contractual foundations and elements of the constitution as well as the question of a unitary state and federation. If the "ethos of loyalty to a treaty and a federation" of member states is taken to be the *unwritten* law of the constitution, as Smend has claimed,[29] then constitutional law presupposes the constitution. The whole controversy[30] can be clarified only by providing a proper definition of what is meant by the "constitution." It is not so much a question of whether Bismarck's Constitution was "incomplete" and "full of gaps," but rather of the fact that the distinction between the written and the unwritten constitution is at the root of the antithesis of constitution (understood in the positive sense) and constitutional law [understood in the sense of specification].[31]

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28. Triepel's claim that "in a federal state there are some powers outside the written constitution but never outside the federation" (p. 335) indicates the extent to which a general constitutional theory of federation urgently requires a distinction between constitution and constitutional law. Cf. Heinrich Triepel, "Die Kompetenzen des Bundesstaats und die geschriebene Verfassung," in *Staatsrechtliche Abhandlungen: Festgabe für Paul Laband* (Tübingen: J.C.B. Mohr, 1908), Vol. II, pp. 249-335; and Richard Grau, "Vom Vorrang der Bundeskompetenzen in Bundesstaat," in *Festschrift für Ernst Heinitz zu seinem 50jährigen Dienstjubiläum* (Berlin: Reimar Hobbing Verlag, 1926), pp. 358-415.

29. Rudolf Smend, "Ungeschriebeneß Verfassungsrecht im monarchischen Bundesstaat," in *Festgabe für Otto Mayer zum siebzigsten Geburtstag* (Tübingen: J.C.B. Mohr, 1916), pp. 260ff.

30. Cf. the exposition by Karl Bilfinger, *Der Einfluss der Einzelstaaten auf die Bildung des Reichswillens: Eine staatsrechtliche und politische Studie* (Tübingen: J.C.B. Mohr, 1923), pp. 52ff.

31. [Tr.] Here the paragraphs dealing with the authority to determine jurisdiction (*Kompetenz-Kompetenz*) and the references to high treason have been omitted, since they are largely concerned with Schmitt's polemic against the constitutional law of the 1871

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Social Contracts and Constitutional Treaties

The numerous theoretical constructs seeking to explain juridically the origin of the state either hypothetically or historically in terms of a *contract* should be distinguished from treaties which create *constitutions*. Often the two have been conflated, particularly in theoretical deliberations concerning the American Constitution and in the statements of those who made the 1789 French Revolution. In these cases a particular kind of constitution was equated with the ideal concept of a constitution.[32] Then this constitution was identified with the state, thus giving the impression that the constitution founded the state. Such a confusion is understandable if a people as a nation first becomes conscious of its ability to act. But a constitution based on the people's constituent power is something essentially different from a social contract in the sense of Rousseau. The democratic principle of the people's constituent power implies that the constitution is brought into being through an act of the people in its political capacity. The people must be presupposed as a political unity if they are to be the subject of a constituent power. By contrast, it is the purpose of social contract theories to establish the people's political unity. The social contract is thus presupposed in the doctrine of the people's constituent power, if one considers the theory necessary at all. On no account is the social contract identical with the constitution in the positive sense, i.e. in the sense of concrete political decisions taken by the agent of the constituent power with respect to the type and form of political unity. Still less is it identical with constitutional enactments deriving from those decisions.

Reich and of little significance for the question of federation today. In their place I have inserted paragraphs of Schmitt's treatise dealing with "The Constitution as a Treaty," or more specifically, "The True Constitutional Treaty." Schmitt, *Verfassungslehre*, *op.cit.*, pp. 61-75.

32. In its struggle with absolute monarchy the liberal bourgeoisie put forward a particular concept of constitution and simply identified it with a constitution as such. A "constitution" was genuine if it included the provisions for liberal freedoms and assured the bourgeoisie a decisive political influence. This generated a specific concept of constitution. As a result, states no longer had a constitution by definition. There were states with and without constitutions — "constitutional" and "non-constitutional" states. It even became possible to speak of a "constitutional constitution," i.e. a constitutionally valid constitution, which would be meaningless if the concept of constitution did not presuppose a particular political program. The so-called positivist theory of the state also identified *the* constitution with a "constitutionally valid constitution" (Jellinek, *Staatslehre*, *op.cit.*, p. 449). Here the political success of a movement was reflected in state and constitutional theory. In the 19th century German professors of constitutional law also presupposed a particular liberal constitutional ideal in their juridical deductions, even if they mediated the absoluteness of this ideal with a few constitutional distinctions. The ideals of liberal freedom were also linked with the democratic self-determination of the people. Schmitt, *Verfassungslehre*, *op.cit.*, p. 36.

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An example of the recent confusion is Fleiner: "The constitution represents the basic law of the state. Under democracy (sic) it is the highest norm, the fundament of the state, the social contract in the sense of Rousseau."[33] Historically, however, the difference has been clear in John Adams' Massachusetts Constitution, which was to a great extent typical and even prototypical. Its Preamble states: "And whenever these great objects are not obtained, the people have a right to alter the government and to take measures necessary for their safety, prosperity and happiness. The body politick is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws, for the common good. It is the duty of the people, therefore, in framing a Constitution of Government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them."[34] Here all the citizens are presupposed as a political unity. Rousseau too distinguished between a social contract underlying the state and the *lois politique* or fundamental principles which regulate the exercise of state power.[35] Moreover, this separation was originally clear in the 1789 deliberations of the French National Assembly. The confusion of social contract and constitution appeared only later.[36]

For Kant, however, the contract establishing "a civil constitution by the citizens (*pactum unionis civilis*)" is a particular type of *pactum sociale* (whereby a number of people bind themselves together in a society); the construction of civil society is at once the "establishment of a civil constitution." The construction is the act whereby the *unio civilis* first originates. The constitution is thus understood in its absolute sense — not in the positive sense used here.[37]

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33. Fritz Fleiner, *Schweizerisches Bundesstaatsrecht* (Tübingen: J.C.B. Mohr, 1923), p. 392.

34. [*The Constitution of Frame of Government for the Commonwealth of Massachusetts* (Worchester, Mass.: Isaiah Thomas, 1787), pp. 3-4.] Cf. Charles Borgeaud, *Etablissement et revision des constitutions en Amerique et en Europe* (Paris: Thorin et fils, 1893), p. 23.

35. Jean-Jacques Rousseau, *The Social Contract and Discourses on the Inequality Among Mankind* (New York: Washington Square Press, 1923), Book II, Chap. 12.

36. Cf. Egon Zweig, *Die Lehre vom pouvoir constituant: Ein Beitrag zum Staatsrecht der französischen Revolution* (Tübingen: J.C.B. Mohr, 1909), p. 330; Robert Redslob, *Die Staatstheorien der französischen Nationalsversammlung von 1789: Ihre Grundlagen in der Staatslehre der Aufklärungszeit und in den englischen und amerikanischen Verfassungsgedanken* (Leipzig: Veit & Co., 1912), pp. 152ff.

37. Immanuel Kant, "On the Relation of Theory to Practice in Constitutional Law (*contra* Hobbes)" in *On the Old Saw: That May Be Right in Theory but it won't Work in Practice*,

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Thus a constitutional *treaty* or agreement does not *establish* political unity but presupposes it. It is not the "covenant" on which a community or commonwealth is based but a "governmental treaty" in the widest sense of the word, meaning that "government" embraces not only the executive as distinguished from the legislature and the judiciary but the whole organized political action of the state. In the natural law theory of the state it is neither a *pactum unionis* nor a *pactum subjectionis*, i.e. it is no treaty of subjugation to an existing political entity which limits its presupposed powers.

A true constitutional *treaty* must also be distinguished from the case in which a number of states jointly conclude a treaty to construct a new *unitary state* in which their former political existence would be submerged. If this treaty establishes the new constitution, then its validity comes to rest on the will of the constituent power of the new state.

A true *constitutional treaty* presupposes at least two already existing parties, each based on the constituent power of an organized political entity. Normally a true constitutional treaty is a *federal* treaty,[38] which results in a new constitution. All members of the federation acquire a new political *status* whereby a dual existence obtains between the federal structure and the member states. Here it is only necessary to clarify the two following points: 1. *A treaty of federation between several independent political entities is a true constitutional treaty*; 2. The notion of a "constitutional contract" within a political entity can be explained only on historical grounds and with respect to a specific situation, namely the "dualism" of constitutional monarchy. In theory the subject of constituent power within a political entity is either the people or the prince — either the people as an independent political actor or the prince as the representative of the polity.[39] Within one and the same political entity a constitution can only be *given* but never negotiated because a true constitutional treaty presupposes that several political entities already exist.

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trans. by E.B. Ashton (Philadelphia: University of Pennsylvania Press, 1974), p. 57.

38. A treaty of subjugation in international law can be called a constitutional treaty only insofar as it deprives one of the parties of the right to choose the form of its political existence and thus to choose its own positive constitution.

39. In the July 1830 Revolution in France the political question concerned the subject of constituent power. The democratic theory proved to be decisive, namely that the people are the subject of constituent power. Advocates of the liberal state sought to evade the alternative between the prince or the people by speaking of a "sovereignty of the constitution." Thus the question was not answered but circumvented and occluded by this somewhat occult concept of constituent power. Nevertheless, all subsequent French constitutions and constitutional laws (1848, 1851, 1875) presupposed the people as the subject of constituent power. Schmitt, *Verfassungslehre*, *op. cit.*, p. 53.

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Thus the numerous constitutional agreements concluded during the 19th century in Germany did not solve the problem of the subject of constituent power but resulted in a compromise which left open who decides in the case of existential conflict. If a constitution imposed by a ruler stipulates that it can be revised "through normal channels of legislation," this reveals such a compromise. Here "through legislation" means nothing more than "popular consent." Thus the constitution is neither a law nor a treaty. The confusion led to the relativization of the concept of constitution: constitution=amendable constitutional *law*.[40] At issue always was the crucial participation of popular representation. Obvious contradictions were thus accepted. The constitution was a *treaty*, i.e. it should not be dictated but negotiated by the prince and the people's representatives. But as soon as popular representation was required, the constitution was a *law*.[41] The founding of the North German Federation and the German Reich came about through a combination of a true constitutional agreement, i.e. a federal treaty, and one of the previously mentioned pseudo-constitutional agreements. The *publicandum* of July 26, 1867 says: "The constitution of the North German Federation is hereby *agreed upon* by us (the King of Prussia), His Majesty the King of Saxony, His Royal Highness the Grand Duke of Hesse, et al. together with the *Reichstag* called to this purpose."[42]

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40. The relativization of the concept of constitution means that instead of the constitution as a whole, only individual constitutional laws are decisive, and this presupposes a concept of constitutional law defined according to external or formal characteristics. Constitution in a relative sense thus means individual constitutional laws. Every substantial distinction is lost with the dissolution of the uniform constitution into a multitude of individual, formally equal constitutional laws. Whether constitutional law regulates the organization of the political will or has some other content is irrelevant. It is no longer a question of why a constitutionally legal determination must be "fundamental." This relativizes everything in a constitution and makes it indiscriminately equal. Schmitt, *Verfassungslehre*, *op. cit.* p. 11.

41. Examples of constitutional "agreements" (which usually did not exclude that the constitution could be "granted by the prince"): the Württemberg Constitution of September 25, 1819: ". . . thus it is finally achieved through the highest resolution and most obedient counter-declaration of *a completely reciprocal agreement* concerning the following points"; the Saxony Constitution of September 4, 1831: "Let it herewith be known that we . . . have set forth the constitution of our land with the counsel and the approval of the estates in the following measure." Often the constitution was *decreed* by the prince, but changes and amendments required the consent of "estates" or "cabinets," such as the Grand Prince of Hesse, the constitution of December 17, 1820, the Preamble and Art. 110. The Prussian Constitution of January 31, 1850, Art. 106 is an example of a constitution unilaterally decreed by a prince with the stipulation that it "[can] be changed in an orderly way through legislation."

42. *Bundes-Gesetzblatt des Norddeutschen Bundes* (Berlin: Gesetz-Sammlungs-Debits-und

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This included a distinction between the *federal treaty* (i.e. the true constitutional agreement) concluded between the federated states (Prussia, Saxony, Hesse, etc.) and that between the federation and the people's representatives (i.e. a pseudo-*constitutional treaty*). To this extent the treaties within a member state were also pseudo-constitutional treaties. Of course, the phraseology used in 1867 had nothing to do with any medieval notions of treaties between estates. Politically it only meant that the constitution should not be imposed from above. That was a concession to modern ideas, whose result was this questionable yet very understandable compromise in these peaceful and even halcyon times. On no account did the rulers intend to recognize the constituent power of the German people. But the fact that a compromise was at all possible meant a recognition of the constituent power of the people, of the democratic principle — even if unclear and partial. The weaknesses of this obscure contradiction became clear on a theoretical level with problems that could not be resolved, such as the relation between federal treaty components and legislative elements in the constitution, and on a practical level in critical situations, such as in the World War after the summer of 1917 when the *Reichstag* began to gain influence over the government.

A *federal constitution based on a democratic foundation*, i.e. one based on the constituent power of the people, presents a particular problem, namely that the federation and its member states presuppose a substantial homogeneity. Once the feeling of national unity is strong enough, the national homogeneity of the people in the various member states easily leads to contradictions with respect to the ideas of the federal constitution. Consistent with the logic of the democratic principle, a people as a political entity with a national consciousness exceeds the boundaries of various states within the federation and substitutes an act of the constituent power of the united people for the federal constitutional agreement.

The Weimar Constitution of August 11, 1919 is based on such an act of the constituent power of the German people. Thus it is not a treaty and consequently also not a federal constitution. By contrast, the constitution of the German Reich of April 16, 1871, consistent with the compromise on which it was based, left the question open. Of course the unavoidable consequence did not go unnoticed. More in terms of

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Zeitungs-Komtoir, 1867), pp. 1-24. *Quellensammlung zum deutschen Reichsstaatsrecht*, Fourth Edition, Edited by Heinrich Triepel (Tübingen: J.C.B. Mohr, 1926), p. 333.

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legal philosophy than of constitutional law, Bierling observed that the "legal reality or validity" of the founding of the North German Federation and the German Reich "must be traced to the direct *recognition by the whole population* of the higher commonwealth created thereby."[43] The elections to the *Bundestag* or the *Reichstag* amounted to such a prior recognition. "Statutory law was enacted in forms which appeared from a certain perspective as *legal transactions* — in part from the standpoint of international law and in part from that of individual state law. But the content of statutory law went beyond the limitations inherent in such international and individual legal transactions. In effect, it meant the constituent power of the German people: democracy. But the "federal" element of the German Reich contained a counterweight to this democratic consequence.

Thus until the end of this constitution in November 1918 new differences of opinion and outlook interposed themselves between the *Reichstag*, on the one side, the *Bundesrat* and the imperial government, on the other. The imperial government stressed the federal foundation of the Reich and presented parliamentarism — the dependence of the government on the approval of the *Reichstag* — and federalism as *absolute* antitheses and as *absolutely* incompatible. Yet the absoluteness of these antitheses lay not in the diversity of organizational forms and institutions (such a diversity is always relative and allows numerous practical combinations) but rather in the antithesis of monarchical and democratic principles. This antithesis concerns the constituent power, i.e. the concrete political decisions which determine the actual form of the polity. Here dilatory compromises, i.e. postponements and suspensions of decision, are certainly possible, but no substantive compromises which could transform the unavoidable either-or into a harmonious as-well-as.

A true constitutional contract is always a status treaty. It presupposes as contractual parties several autonomous political entities which as such have a political status. The content of this status is the ground of a new status for all the participating states. Such a treaty is a *voluntary* contract, but only insofar as it is based on the will of the contracting parties. It is no voluntary contract in the sense of modern private law and "freedom of contract" in the sense of the liberal social order. Owing to the ambiguity in the word "contract," it is necessary to distinguish between a *voluntary contract* and a *status contract*. If a medieval writer could speak

43. Ernst Rudolf Bierling, *Juristische Prinzipienlehre* (Freiburg and Leipzig: J.C.B. Mohr, 1898), pp. 356ff.

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of a state or government founded on a "contract," a 17th century philosopher such as Hobbes could use the same word, and finally, in the 20th century liberal relativists can water-down the old idea that the state is based on a contract in such a way that the modern democratic-parliamentary state is defined as a "compromise," then clearly the word "contract" presupposes so many different meanings that it is useless to discuss it without more precise distinctions. This is also true of such maxims as *pacta sunt servanda*.

A *voluntary contract* in the sense of the liberal legal and social order has a threefold meaning: 1. The parties to the contract confront each other as *isolated* individuals in relations of private law. But a contract between two individuals and a treaty between two political entities is something so different that to use the same designation for both can only suggest insignificant and superficial similarities. 2. A voluntary contract between individuals establishes only *individual* relations which are in principle *calculable*, limited in content and therefore terminable. 3. A voluntary contract thus never embraces the totality of the person. It is terminable and revocable; the inclusion of the person as a whole even appears unethical and illegal.[44]

A *status contract* establishes an enduring relation which embraces the person in the totality of his *being* and relates it to a total order in more than merely calculable individual relations. This [kind of] contract cannot be voluntarily terminated or revoked. Examples of such status contracts are engagement and marriage or civil service relations; and in other legal orders, feudal contracts, associations based on an oath (conjurations), etc. The *oath* is a typical symbol of committing the whole person. For this reason it must disappear from any social order based on voluntary contracts.[45]

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44. This is evident in civil law and was proclaimed as a fundamental principle by the French Revolution (Art. 18 of the 1793 Declaration of Human Rights and Art. 15 of the Declaration of the Year III, 1795). This principle was also recognized in §624 of the German Civil Code: "If service is agreed upon for life of a person, or for more than five years, the employee may end it upon the expiration of five years. Six months notice must be given." See *The Civil Code of the German Empire: as enacted on August 18, 1896, with the Introductory Statute enacted on the same date (in effect January 1, 1900)*, Translated by Walter Loewy (Boston: The Boston Book Co., 1909), p. 153. The same idea became law in Art. 1780 of the Civil Code. It is evident also in individual references to personal "freedom." Erwin Jacobi, *Grundlehren des Arbeits* (Leipzig: A. Deichart, 1927), p. 47. For another example of the relation between calculability and freedom, see Carl Schmitt, *Die Diktatur: Von den Anfängen des modernen Souveränitätsgedankens bis zum proletarischen Klassenkampf* (1921), Fourth Edition (Berlin: Duncker & Humblot, 1978), p. 37n.

45. Historical development has proceeded "from *status* to *contract*" in the famous

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If a constitution is brought about by agreement or treaty within an existing political entity, such has no binding force on the constituent power in a conflict situation. A *plurality* of subjects of the constituent power would suspend and destroy political unity. Once the process of dissolution begins, "*intrastate treaties*" originate within the *state*. If a corporate or any other organization is able to give intrastate treaties the character of *constitutional laws*, then it has succeeded in weakening the state as much as possible without destroying political unity. However, if the "intrastate treaty" in effect not only makes it more difficult to amend constitutional law but even limits and abolishes constituent power, then political unity is destroyed and the state is in a completely abnormal situation. All juridical constructions are thereby useless. That was the situation of the German Reich since the 16th century.[46]

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formulation of Sir Henry Sumner Maine, *Ancient Law: Its Connection with the Early History of Society and its Relation to Modern Ideas* (London: Murray, 1924), p. 170. That is essentially the same line taken by Ferdinand Tönnies in his great book, *Community and Society (Gemeinschaft und Gesellschaft)* (East Lansing, MI: Michigan State University Press, 1957), in which he traced the development from *community* to *society*. I want only to add a brief elaboration to these historical and sociological observations that is not meant to diminish their great insights but rather to clarify them more precisely. The opposition of status and contract and community and contract can be misleading insofar as both communal and status relations can be established by contract. The social order of the Middle Ages was based on innumerable contracts: feudal contracts, corporate contracts, conjurations. Here "contract" means *status* contract; the oath confirms the durability of the contract as well as the person's existential tie. The rejection of oath-taking by Baptists and other sects thus signaled the real beginning of the Modern Age and the epoch of *voluntary* contracts. Werner Wittich [1867-1937] has discussed these issues in relation to the Baptists in a work that unfortunately remains unpublished [until today].

The concept of "contract" is used indiscriminately because there are still no historical studies of its development. Without any differentiation a continuous line is drawn in the historical expositions of the doctrine of a state contract from Marsilius of Padua to Rousseau. Also Gierke's book on this subject is inadequate. Cf. Otto Friedrich von Gierke, *Johannes Althusius und die Entwicklung der naturrechtlichen Staatstheorien: Zugleich ein Beitrag zur Geschichte der Rechtssystematik*, Third Edition (Breslau: M. & H. Marcus Verlag, 1913). Unfortunately it confuses medieval concepts of contract, such as those of Althusius, with those of Hobbes and Rousseau without noticing the fundamental transformation that had taken place within the concept itself.

46. In most European states political unity was the work of princely absolutism. Yet in the German Reich medieval conditions prevailed until its end in 1806. Thereafter new political entities — states like Prussia, Bavaria, Württemberg and Saxony — came into being within the former territories of the Reich. In the 18th century the Reich was still only a heterogeneous aggregation of developing political entities. Hegel provided the best formulation of this situation in his early work on "The German Constitution": "The German political edifice is nothing but the sum of rights which the individual parts have wrested from the whole, and this [system of] justice, which carefully watches to see that no power is left over to the state, is the essence of the constitution." See *Hegel's Political Writings*, Translated by T.M. Knox, with an Introductory Essay by Z.A.

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Of course such a process of dissolution can begin anew at any time.

If a constitution is based on an agreement or a treaty, then the *legal basis of its validity* is the political *will* of the contracting parties and the *existence* of the federation. A *federation* includes the status of every member state in a *collective status*. Beyond the mere contractual obligation, every member state is changed in its totality.[47]

Democracy and Federalism

Both democracy and federalism presuppose homogeneity. The necessary result of a federation of democratic states is the correspondence of democratic and federal homogeneity. Thus it is only natural in the development of democracy that the homogeneous unity of the people transcends the political boundaries of member states and replaces the equilibrium between the federation and the politically independent member states with a general unity.

This explains the development of most federal states of the 19th and 20th centuries, especially the US and Germany. The political independence of member states was proportionately limited as democracy expanded. This development began in the US with the grounding of the Federal Constitution on the consent of the people in the individual states rather than on the states themselves.[48] Calhoun had serious

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Pelczynski (Oxford: Clarendon Press, 1964), pp. 150-51. Whether this remarkable conglomeration constituted a *mixture* of state forms (i.e. limited monarchy and aristocracy), a *status mixtus* or a *system* of states (i.e. a federal entity) has been debated since the 17th century. The only possible, intellectually responsible answer has been given by Pufendorf, namely that this Reich was an abnormality and a "monstrosity." See Severinus de Monzambano, a.k.a. Samuel Pufendorf, *De statu Imperii Germanici*, ed. by Fritz Salomon (Weimar: Hermann Böhlaus Nachfolger, 1910), Chap. VI, §9, p. 126.

47. *A federal constitution can be established contractually only by states that become members*. The constitution of an independent state cannot be based on an international treaty of *third* parties. To political existence belongs self-determination. The constitution understood in a positive sense is an expression of this possibility — to choose the type and form of one's *own* political existence. If an international treaty regulates the government and administration of a third country, then this country becomes thereby the *object* of foreign agreements and compromises. That signifies the *negation* of its political autonomy and thus rules out the possibility of a constitution in the positive sense. An international treaty can never create a constitution in the positive sense. It can also not be part of the constitution of an independent state. A treaty of federation (also of a confederation) is no "purely international" agreement. Schmitt, *Verfassungslehre*, *op. cit.*, p. 71.

48. The US Constitution was drafted in a constitutional *convention* and then submitted to the *Congress* of the assembled states. Representatives of individual states recommended its acceptance and it was finally ratified in each of the thirteen states by convention, i.e., by assemblies elected for this purpose. On the difficulties of this procedure and the often narrow and contingent majorities, see James Beck, *The Constitution of the United States: Yesterday, Today — and Tomorrow?* (New York: H. Doran, 1925), Chapter XV, pp. 173-97.

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difficulties with respect to the Preamble to the Federal Constitution, which begins with: "We the people of the United States."[49] The Civil War ultimately decided this development. The democratization of 1918/19 had a similar effect in Germany, transforming the member states of the federation into *Länder* [in effect: provinces]. The federal theories of Calhoun (for the US) and Seydel (for Germany) thereby became obsolete, but not because they were wrong from the standpoint of federalism. The development of democracy and specifically the democratic consequences of the concept of a single and undivided people within a nationally homogeneous federation led necessarily to a unitary state. Once this is acknowledged, it is possible to reexamine what remains relevant for federal theory and to integrate it into constitutional theory.

The linkage of democracy and federalism leads organizationally to a distinctive type of state — a *federal state without a federal foundation*. On the surface this is a contradiction. However, it refers to the features of the federal state which originated in an earlier federation and have been transposed into the new form. Political entities such as the American Republic and the Weimar Republic are no longer federations. If they are still referred to as federal states, then federalism must be understood in terms of how it is defined in the respective constitutions.

The federal foundation and federalism itself are destroyed by the democratic concept of the constituent power of the *whole* people. The features of federal organization that are still maintained become part of the constitutional organization of the whole state, whereby they constitute a particular type of state. The legacies of federalism usually combine with principles of civil rights and thus fuse into a complicated system of separation of powers and decentralization. The US Constitution already foresaw this possibility. *The Federalist*[50] claims that the US Constitution neither creates a completely unitary nor a completely federal state. Here the independence of the individual states provides new guarantees to the organizational principle of the liberal state.

A federal state without a federal foundation has only one people. The character of earlier member states *as* states is destroyed because a state is the political unity of one people. There can be only one political unit in a state whose form of political existence is based on the constituent

49. Calhoun, *Works*, *op.cit.*, Vol. I, pp. 132ff.

50. James Madison, "The Federalist No. 49" (February 2, 1788), in *The Federalist*, Edited, with Introduction and Notes, by Jacob E. Cooke (Middletown, CT: Wesleyan University Press, 1961), pp. 338-43.

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will of the whole people. Specific political decisions, such as the determination of friend and enemy or other existential concepts like public order and safety, can be made only by the political totality because they are essential features of political existence. There is thus only *one* political entity, whereas in any true federation — a confederation as well as a federal state — a multiplicity of political entities coexist with the federation. Today in Germany one must reject the notion that politically there is still a Prussian, Bavarian, Hamburgian or any other people aside from the German people. The Preamble to the Weimar Constitution does not refer to a coalition or unity of German peoples but appropriately adopts the formula: "The German people are of one common stock."

The result of this type of federal organization is that the earlier states are no longer closed, impermeable entities confronting each other. According to the Weimar Constitution, not only is there a common citizenship but it is possible to distinguish the population of member states and even parts of the population from the individual states as such, which would not be the case if they still had their own political existence. Such a separate existence would be contradictory from the standpoint of democracy. In a democratic state, i.e. one organized according to the principle of identity, no distinction should be made between the will of the state and the will of the people because they are one.

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*Beyond the Nation-State: The Multinational State as the Model for the European Community**

M. Rainer Lepsius

The Future of the European Nation-State

Closer economic and security cooperation between European nation-states after 1945 obtained not only as a result of the desire for European unity but also as a result of active US sponsorship. The Organization for European Economic Cooperation (OEEC) and the Brussels Pact of 1948 evolved into NATO the following year. In 1952 Jean Monnet's principle of supranationality became concrete in the European Coal and Steel Community (ECSC). Along with the Rome Treaty that created the European Economic Community (EEC) and the European Atomic Community (Euratom), the ECSC was the first attempt to integrate European nation-states into a larger political and economic system. Participating states agreed to transfer partial sovereignty to the European Community (EC), which meant the direct subordination of individual citizens, national institutions and courts to supranational agencies. Although international treaties were to bind only the governments of the contracting states, which would retain unlimited jurisdiction in their own spheres as well as the option to withdraw at any time, this is no longer the case in the EC. The expansion of EC jurisdiction

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* Translated by G. L. Ulmen from "Der europäische Nationalstaat: Erbe und Zukunft," in M. Rainer Lepsius, *Interessen, Ideen und Institutionen* (Opladen: Westdeutscher Verlag, 1990), pp. 264-68 and "Nationalstaat oder Nationalitätenstaat als Modell für die Weiterentwicklung der Europäischen Gemeinschaft" in *Staatswerdung Europas?: Optionen für eine Europäische Union*, Edited by Rudolph Wildenmann (Baden-Baden: Nomos Verlagsgesellschaft, 1991), pp. 19-40.

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through its regulative resolutions further eroded the autonomy of members. Thus a process was set in motion which in principle may spell the end of the European nation-state.

What is the future of the European nation-state now that its room for maneuver has been limited, its ability to compete in the international arena is in doubt, and its complete subsumption within a European Union (EU) is on the agenda? This state of affairs has raised again the old question of a European federation and the new question of whether the nation-state is compatible with federalism. One thing is certain: European unification cannot proceed independently of the nation-state as a given historical fact.

One option, a "United States of Europe" modeled after the USA, would replace existing nation-states with the EC as a unitary state. Presently, the EC shares sovereignty with its member states, but its growing independence from them has set it on a trajectory of becoming a unified state. Indicative is the fact that the European Supreme Court has authority to issue sanctions. While a Council of Ministers controlled by the national governments of the member states remains the ultimate EC authority, the Commission's prerogatives are becoming increasingly dependent on the recommendations of the European Parliament. Even though the European Parliament's power is limited, its freedom of action is expanding irreversibly. While the EC institutional order is inherently complex, it is nonetheless the core of a new political entity analogous to the 1871 German Reich. Then, as now, sovereignty lay with the contracting states, even though the people elected a parliament limited in its ability to initiate legislation and to control the budget. Although the Reich had a limited jurisdiction and was dependent on the *Länder* in budgetary matters, it constituted an economic and legal community. The analogy, however, should not be carried too far. The Reich had wider functions in military matters and foreign policy than the EC today. The similarity lies more in the dual structure of legitimacy, in the tension between the member states and popular representation. In the Reich the result was internal political paralysis. Something similar is also developing within the EC. Potential conflict between the two principles of legitimacy can only be overcome in the short run.

Another option is a federal system, either as a confederation or as a federal state. This tendency is evident in organizations such as the West European Union (WEU) and European Political Cooperation (EPC). Whereas the first is conceived in terms of strengthening the European pillars of NATO, the second seeks to coordinate European foreign policy. Both lack supranational organizational and legislative powers and are

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only based on voluntary cooperation and international agreements. They are, however, the basis of a European confederation.

The EC and the WEU are far apart, since the tendency of one is supranational and the tendency of the other is national or at best international. In the former, the heads of state and government function as a European Council with a kind of extra-constitutional authority; in the latter, they are merely representatives of the member states. In like manner, the foreign ministers who make up the EC Council of Ministers merely function unilaterally or cooperate multilaterally in the EPC. Thus presently the organizational principles of both the nation-state and federalism coexist without either gaining predominance.

This duality and the various options available for a EU have not yet received the public attention they deserve. Not only do national governments still command considerable loyalty, but the nation-state is still the primary locus of political legitimacy. Despite its inability to defend its borders and its dependence on international economic forces, domestically it still retains full authority. In addition, there is a peculiar distribution of responsibility regarding certain political matters. For example: if the domestic economy is good, that is hailed as the result of a successful governmental policy; if it is bad, it is blamed on world economic conditions over which the government has no control. This type of rationalization — giving the nation-state credit for its political decisions at times and absolving it for them at others — upholds the nation-state's legitimacy while diminishing its authority.

This division of legitimacy and authority is typical of the process of European integration. Though legitimacy is located primarily in the member states, the EC is staking an independent domain beyond their control. The accumulation of legal ordinances and their enforcement have strengthened the Commission and the decisions of the European Supreme Court. The power of the European Parliament expands as the "legitimation gap" of the Commission's "bureaucratic autocracy" becomes increasingly problematic. But this also encourages the development of a European centralized state. National constitutional values are gradually transcended through a universalization of human rights that becomes the basis of EC legitimacy.

Yet the EU remains bound to the nation-state. Therefore, attempts to develop a structure of legitimacy above and beyond the nation-state cannot simply begin with an ideal "European nation." Existing nation-states must be incorporated systematically in the allocations of authority and legitimacy. That amounts to the conscious federalization of a united Europe. Since EC jurisdictions are still closely defined, it has

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been possible to ignore the problem of a European "supranational state." This is no longer the case and after 1992 the problem will have to be confronted. A "Europe of fatherlands," such as Charles de Gaulle once foresaw, must be placed on the agenda.

Should the system of European nation-states evolve into one Europe, the present "nations," i.e. politically autonomous entities defined in terms of state citizenship, will become "nationalities," i.e., minorities within a federation. In this context, however, it is worth recalling that the Austro-Hungarian Empire came to ruin because of its failure to solve the "nationality question" and its inability to construct a political order giving minorities sufficient autonomy while maintaining a common will at the federal level. The universalization of human and civil rights allows for the autonomy and participation of individuals but not of corporate entities. "Nationalities" require collective autonomy and participation, which is only possible in a federation. Hitherto the EC has proceeded to develop a federal state and ruled out the alternative of a confederation. While this alternative may create the same problems with democracy encountered by "cooperative federalism" in Germany, federalism remains a viable alternative for the integration of European nation-states.

In a nutshell, the nation-states' obvious limitations in conducting their own affairs require new forms of political integration. In principle this could be accomplished by imperialist means. In Western Europe, however, there are no imperialist states with enough power to do so. It could also be accomplished through the revival of a federal system similar to the one which has recently resolved regional tensions in, e.g., Spain and Belgium. If the EU continues to develop along the lines of a "supranational state," the result will be the escalation of "conflicts between nationalities." In this context it becomes crucial to find new ways to link the nation-state with the federal system. This would create new challenges for the nation-state, which will have to confront tensions within supranational as well as subnational political entities.

To differentiate the equality of citizens from that of regions, religions, cultures, ethnicities and social formations allows for the grounding of European institutions in transnational values, but it does not require the dissolution of the nation-state as such. The latter is heir to a dual tradition: the right of social entities to independence and the development of civic equality irrespective of regional, cultural and ethnic differences. Both traditions exist in a relation of tension within the history of the European nation-state and will determine European integration. The future of this project depends on the successful management of this tension.

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Nation-State or Multinational State?

The EC may have reached a stage requiring institutional innovations. This is the result of the constant expansion of EC jurisdictions and the lack of sufficient direct democratic participation in and control over EC decisions. The two cannot be separated: the greater the scope of regulations, the more necessary a direct legitimation of decisions.

During the last thirty years the EC institutional structure has changed only slightly. Decision-making procedures established in the original treaties were reiterated in the expansion of the EC from six to twelve members. They have proven to be exceptionally viable. Of course, this has not always been the case. But the efficiency with which the domestic market has been created is indicative of this viability.[1] It is based on the jurisdictions (including the right of legal sanctions) the EC has acquired over the years as well as the political will of the member states.

The European Parliament has decision-making power and the potential for self-legitimation. Composed of the delegates of the parliaments of the member states, it has grown beyond a consultative assembly through direct elections (since 1979) and expanded rights of participation (via the unified European acts of 1986) in "cooperative procedures" with the Commission and the Council of Ministers. Yet it has not assumed the function of a parliament. While its basis of legitimacy is the democratic representation of the citizens of the member states, its authority is less than that of a normal parliament. Since, however, it is not a "governing" parliament, no European party system has developed. Political parties form loose factional alliances and compete for power only on the national level. Citizens see European elections as secondary phenomena mediated by their national political systems. To this extent, the European Parliament's legitimacy is purely formal.[2]

The EC shares with the Commission peculiar planning, fiscal and executive functions, although the former exercises legislative initiatives and enforces European court decisions. Since there is no responsible parliamentary government, a political "regime"[3] creates tasks for EC as well as

1. Heinrich von Moltke, General Director of the 23rd. Commission of the Bergdorf Discussion Circle, said: "At present a decision with respect to the domestic market must be made every week." Cf. "Wie geht es weiter mit den Deutschen in Europa?" in *Protokoll 90* (April 29, 1990), pp. 80f.

2. Cf. H.-J. Hoffman and Uwe Feist, "Die Europawahl 1989 — Eine klassische Nebenwahl?" in *Aus Politik und Zeitgeschichte*, Vol. 8, No. 43 (1989).

3. On the concept of "regime" as a normative and regulative system of decision-making with factual validity, cf. Beate Kohler-Koch, *Regime in den internationalen Beziehungen* (Baden-Baden: Nomos Verlagsgesellschaft, 1989).

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national representatives and experts. Their "interfacing" is the basis of the Commission's planning and steering capacity. Cadres structure and participate in the decisions of the Council of Ministers.

The EC institutional order is reminiscent of the constitution of the 1871 German Reich, which also came about through an alliance of princes and Hanseatic cities rather than through the people's constituent act. In both cases a kind of "supplementary representation" of the people was instituted above a parliament with limited jurisdiction. In due course the German Reich developed into a nation-state without a suitable constitution. The chancellor was still appointed by the Kaiser and was primarily Prussia's prime minister. The various state offices became governmental ministries whose bureaucratic elites cooperated with organized interest groups without adequate parliamentary controls. While the *Reichstag* retained budgetary powers, it was never a "governing parliament." Parties functioned primarily as opposition groups and did not develop into political organs able to govern or constitute a national will. A comprehensive constitutional development was blocked not only by antipathy to democracy but also by the unresolved tension between the federal units and the "imperial center."[4] Despite the constitution, the political center continued to accumulate power until the 1918 revolution.

While the EC is not the same as Imperial Germany, there is a basic conflict in its institutional order which is not likely to be resolved naturally. The EC is both a contractual "functional alliance"[5] and a supranational organization which can restrict its members' activities. Strengthening the EC's direct legitimacy, rather than the indirect legitimacy obtained through the member states, has expanded the scope of EC regulations. Similarly, once the European Parliament achieves full jurisdiction, its democratic convictions will legitimate the EC as a sovereign entity. This is the goal of various reform proposals. They seek to establish parliamentary control over the various commissions as if it were a parliamentary government, relegating the Council of Ministers to the role of a second chamber. Here the model is that of the 19th century European nation-state.[6]

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4. For a critique of Imperial Germany, see Max Weber, "Parliament and Government in a Reconstructed Germany (A Contribution to the Political Critique of Officialdom and Party Politics)," in Weber, *Economy and Society: An Outline of Interpretive Sociology*, Edited by Guenther Roth and Claus Wittich (Berkeley, Los Angeles and London: University of California Press, 1978), Vol. 2, pp. 1381-1469.

5. Cf. H.-P. Ipsen, "Europäische Verfassung — nationalle Verfassung," in *Bitburger Gespräche* (Munich: Beck Verlag, 1987), pp. 37-53.

6. Cf. the constitutional proposal of the European Parliament of February 14,

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Such an expansion of the European Parliament's power neither resolves the problems of jurisdiction between the Council of Ministers and the Commission nor defines the European Parliament's jurisdiction. The fundamental conflict lies in the dual basis of EC legitimacy, which derives partly from the treaty of the members (the legitimate governments of the respective nation-states are the "dominant agents of the treaty") and partly from direct representation of the "people of the EC" in the European Parliament. Yet without a European citizenry EC membership complete with new passports remains purely symbolic.

The rights of European citizens are beginning to develop in supranational terms of freedom to live, travel and study, settlement rights, recognition of degrees and the like. Exclusively national rights will give way as soon as the active and passive franchise is established within all member states. Expansion of EC legislation increasingly subordinates the courts and the citizens of the member states to legal norms originating outside national legislation. Its various legal systems are not determined democratically. The people are "sovereign" in the national state and the "subjects" of the EC. Thus the development of the EC into an EU is not merely a question of institutional reform but rather of mediation between different principles of legitimacy.

According to the federal state model, dual legitimacy will be suspended by transferring sovereignty to the center. As the member states are subordinated to the federation, the latter assumes not only the most essential functions but the "authority to allocate jurisdiction" (*Kompetenzkompetenz*) as well. Indicative is the "cooperative federalism" of the German constitutional system in which member states retain only limited autonomy. They have the monopoly of administration, their own revenues and participation in federal legislation, but no veto power. Only by securing a majority in the Federal Council can a member state prevail against a federal parliamentary majority in the so-called consensual legislation. Federal law supersedes state law, and citizenship is bestowed by the federal state.

The transformation of the EC into a EU along federal lines would destroy the dual basis of legitimacy. This model appears not only plausible but self-evident. What remains open is the mediation between

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1984, reprinted in *Eine Verfassung fur Europa*, Edited by J. Schwarze and R. Bieber (Baden-Baden: Nomos Verlagsgesellschaft, 1984). For a critical review, see H.-P. Ipsen, "Utopisches im Parlaments-Entwurf einer Europäischen Union," in *Einigkeit und Recht und Freiheit: Festschrift für Karl Carstens zum 70. Geburtstag am 14. Dezember 1984*, Edited by Bodo Börner, Hermann Jahrreiss and Klaus Stern (Cologne: Heymanns Verlag, 1984).

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the "Chamber of States" and the "House of Representatives." The problem concerns respective jurisdictions and compromise regulations in case of legislative differences. These are decisive in determining the political process. In this case, the principle of subsidiarity really does not limit jurisdiction. The distribution of jurisdictions, according to the rule that each should do what he can do best, presupposes the notion of a hierarchy of tasks and agencies. The highly functional interweaving of political spheres introduces a political entanglement into the federal system and over time also a mixed financing of programs — a pastiche of what were once clearly distinguishable jurisdictions.[7] The result is an increase in regulative arrangements. The expansion of jurisdictions has given power to those who allocate jurisdictions and this higher level needs a stronger basis of legitimacy.

Present internal dynamics lead to the conclusion that European unity will culminate in a federal state. Once in motion, this process can be slowed down or speeded up, but its direction cannot be altered. With respect to relatively concrete tasks, the EC has expanded its jurisdictions through treaties. The four so-called basic freedoms which determine EC goals — freedom of travel, freedom of trade, freedom of services, and freedom of movement of capital within EC borders — have increased the political space for regulation: rights of cooperation of employees in the European joint stock exchange, the packaging of goods, students exchanges, automobile pollution regulations, and the regulation of television advertising. Open competition seems to be both instrumental and value-neutral but requires intervention in the social, fiscal, environmental, research and cultural policies of member states. Such regulations also come under the jurisdiction of the European Supreme Court and thus directly affect member states without the mediation of national parliaments. EC jurisdiction is buttressed by the formally equitable standards of the unified domestic market. Given the interdependence of the various political spheres, EC jurisdiction will continue to expand and include foreign economic policies as well as external and internal European security. The jurisdictional claims of a EU eventually would include all the tasks and duties of traditional nation-states.

Problems are increasing with the expansion of regulations and are having a growing impact on the member states' political structure. The

7. On this development, see F. W. Scharpf, "Die Politikverflechtungs-Falle: Europäische Integration und deutscher Föderalismus im Vergleich," in *Politische Vierteljahresschrift*, No. 26 (1985), pp. 323-56.

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best example is the proposed currency union and the establishment of a European central bank. These goals appear instrumentally plausible and necessary for a unified domestic market. Fixed exchange rates and standard monetary and credit policies are needed to control inflation and discipline the member states' economies. Without them it is impossible to steer the member states' economic and social development. The whole national system of interest mediation and compensation would be subject to the European central bank's monetary and credit policies.

Leaving aside the economic consequences, such a European central bank would become the main institution for steering EC economic policy. Given its autonomy, it would require legitimation through both the Commission and the member states' governments and would have to work closely with both. A central bank must be recognized by the whole economic and political system on more then merely legal grounds. Thus the creation of a European central bank would be a decisive step not only in currency unification but also in creating a federal state.

Although fundamental reform of the organizational structure is not initially required, the internal dynamics of the process will eventually make this appear imperative. There are already plans for a European government responsible to parliamentary control based on the EC's democratic legitimacy, the transformation of the Council of Ministers into a second chamber, and the establishment of an elected head of state.

A fully sovereign European federal state is projected on the basis of an aggregation of the tasks of existing nation-states. The EU should evolve a comprehensive concept of the state along with a concept of European citizenship, its own constitutional rights and modes of parliamentary participation. Such a process would gradually lead to the functional displacement of the member states. The latter would acquire the status of the German *Länder*, while in Germany the Supreme Court would lose its authority and the Federal Office of Cartels would become "residual." Something of the kind will also happen to all other member states. To assume that the system of interest mediation, decision-making and legitimate consensus in modern democratic societies is guaranteed by central government agencies is to minimize the state. This is not the case in any of the German *Länder* and it would not be the case in a united Europe. The project of a EU, reiterated in June 1990 and further negotiated in December of the same year by the heads of the member states, limits the problem to a reallocation of jurisdictions of the central agencies and so proceeds along the lines of the

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19th century nation-state. On the one hand, the EU is seen as a comprehensive authority with reserve powers for the member states. Decisions with respect to currency, monetary and credit policy, foreign policy and security, social policy, regional policy, environmental and fiscal policy should be centralized. On the other hand, the rights of parliament should be limited and decision-making power should remain with the Council of Ministers. The governments of member states should continue to be "sovereign," as were the constitutional monarchies in mid-19th century. The European Parliament ends up with the role of all underprivileged chambers. It not only wants more participation but also decision-making power and control of the government. The more concrete the project of European unification becomes, the greater the possibility of a "constitutional conflict." This can be seen in the Luxembourg government's reactions to the treaty outlined April 17, 1991. The more comprehensive the authority of European agencies, the greater the claim to complete democratization of these agencies, i.e., majority decision, parliamentary control of government, and parliamentary legislation.

The "constitutional conflict" between the European Parliament and the Council of Ministers is the result of EC "dual sovereignty." The community of sovereign states creates a supranational regime which gradually emancipates itself from the member states and constructs a "supranational sovereignty." In principle this conflict is difficult to institutionalize so that "dual sovereignty" can be maintained indefinitely. The tendency is for one to either bloc or absorb the other. Today a European state is being created which presumably will prefigure a European nation.[8] The homogeneity and identity deriving from the rights of a European citizenry could then also lead to the development of an institutional system that eventually would pave the way for supranational European decisions. According to the model of the European nation-state, that is the ultimate goal of a EU. It remains to be seen whether European integration can create a European nation modeled after the 17th and 18th century monarchies — whether it can create a homogeneous nation with sovereignty over a given territory. The US was able to constitute a nation by integrating immigrants who could not create their own institutions.[9] In Europe, however, there are nation-states which for centuries have had their own cultural, social

8. Cf. David Easton, *The Political System* (New York: Knopf, 1965), pp. 171ff.

9. Cf. Seymour Martin Lipset, *The First New Nation: The United States in Historical and Comparative Perspective* (New York: Basic Books, 1963).

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and political histories and institutional orders. In order to form a European nation out of these individual states they would have to be dismantled and reconstructed. In this respect, there should be no ambiguity about a EU, even if this is not realizable in the near future. It is counterproductive to occlude the implications of such an undertaking, even if this may be tactically useful.

The federal option should be considered if there is to be a European state without a European nation. Not only should the nation-states be retained, but so should their respective jurisdictions in accordance with the principle of subsidiarity. Cultural affairs should be left to particular nationalities, as Germany does with the *Länder*. Nine national languages are spoken in the EC. A tenth, Catalan, has been recognized even though it is not the language of any particular state. This alone is a significant distinction between the EC and the US. Given such linguistic difference, which will no doubt increase, there is no possibility for the EC to develop the kind of cultural unity forcibly imposed by European nation-states over several centuries. On the one hand, such languages as English, French, Spanish and Portuguese are internationally recognized; on the other, English, which is the *lingua franca* of economic, technical and scientific commerce, is a foreign language to more than 80% of the EC population. If one assumes that in the future some 20% of this population will become competent in English or French, that still would exclude 50% from a common "European communication." Thus Europe will still rely on national languages. Here the cultural autonomy of nation-states does not concern regional rights nor the preservation of dialects and folklore but rather the maintenance of communicative structures. The recognition of one's own linguistic competence for all everyday communication was and is one of nationalism's most powerful attractions shared by the cultural elite and the population at large. Full linguistic competence is the precondition for information and participation, i.e., a fundamental democratic prerequisite.

Schooling is also an aspect of cultural autonomy because it facilitates an intergenerational transmission of cultural traditions. Since education imparts professional qualifications, it is tied to the labor market. For this reason, coordination of the European labor market with respect to freedom of movement has led the EC to regulate educational policies. The effects are still modest. Yet there are already conflicts between national autonomy and European coordination concerning educational charters and exchanges of students and scholars. Nevertheless,

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financial incentives have changed national goals. Because linguistic and educational autonomy are inseparable, no higher authority should interfere with either, despite the seeming implications of competition and freedom of movement.

The nation-state is not merely a cultural entity but a complex system of structured interests, institutionalized conflicts and integrated distribution. National stability is based on the functioning of this system, which is only in part represented by governing agencies. This includes systems of wage and price agreements, trade unions, industrial associations, national tax and welfare policy, regional resource administration, forming public opinion, and legal and security systems. In Germany the *Länder*'s stability is based on their systems of interest formation and mediation.

The goal of a common European currency to coordinate the member states' budgetary and labor policies by financial-political means hinges on the "distinct national systems of wages and the distinct organizational structures of trade unions."[10] More generally, the coordination of an economic and social order hinges on the structure of intermediate institutions which have hitherto been barely affected by EC integration. Political parties, trade unions, professional associations and the mass media are all organized along national lines and dependent on the nation-state. An intermediary "Europeanization" of this network of organizations would last decades, lead to substantial conflicts within the EC and prevent the development of a centralized federal regime. Many expect the EC to substitute for the inadequate intermediary as well as central political institutions of the nation-state. Dissatisfaction with national political systems and the seeming impossibility of reforming them (e.g., Italy) has led to demands for greater European authority supporting regionalism. Thus the EC is seen as a potential ally of attempts to reform inadequate national institutions. But were the EC to adopt such a role, there would be less internal political pressure to reform. The decision to substitute European for national institutions should remain at the national level, which would allow the international drive toward efficiency and increased competitiveness to encourage reform from within.

National institutions generate a great deal of political participation and legitimation. Actual or potential participation which legitimates political systems is not just the result of political parties, elections and parliaments. This is also true in Germany, which requires a wider network of mediations. It would be impossible for some 500 deputies of the

10. Cf. Fritz W. Scharpf in *Die Zeit* (December 12, 1986).

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Bundestag to fulfill such a function in a democratic state. This is even truer of the some 500 deputies of the European Parliament. To attempt to mediate European politics *vis-à-vis* the citizenry and to represent this citizenry in European politics would overtax their abilities. The European Parliament can gain legitimation through direct election, but it can sustain a common European legitimation only through a complete unification of the structures of participation in nation-states.

European legitimation must also involve the whole system of intermediary interests presently handled by economic and social managers outside democratic control mechanisms. A cooptation of experts leads to a coordination of functional elites but does not create political legitimacy. The argument for increasing European legitimacy with respect to decision-making is not only a matter of direct legitimation through representative institutions but also one of interest formation. In this respect, the allocation of jurisdictions and resources is decisive for political parties, interest groups and agencies of public opinion. Public opinion is constituted on various levels with a variety of procedures for mediating interests rather than simply through an internal principle of organization.[11] Thus German federalism is also a matter of party organizations, the formation of interest groups, autonomy in wages and prices, and the media. The *Länder* also play a role since they have the means and expertise to mediate interests, participation and distribution.

What is crucial, however, is the development of the centralized mediation of vertically organized interests and authorities. This takes place at the level of the nation-state. Thus in order to create a system of legitimation in a united Europe, the balancing of interests must be a central function of the nation-states. Given the gap between various interests, which are promoted by certain bureaucratic organizations, the differences among interests and authorities vary vertically. However, the mediation and confrontation between interests and the reasons behind them must remain on the national level because this function cannot be duplicated on the European level. To date, the success of the EC has been a function of the fact that its political jurisdiction has been limited. It could vertically isolate itself from politics and thus guard against conflicts of interest, while the horizontal mediation of interests took place within the member states. The more the EC enters the political sphere, the greater its dependence on the member states.

11. Cf. M. Rainer Lepsius, "Die Prägung der politischen Kultur der Bundesrepublik durch institutionelle Ordnungen," in Lepsius, *Interessen, Ideen und Institutionen*, *op. cit.*, pp. 63-84.

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Thus there are limits to the evolution of a horizontal mediation of interests on the European level. A devolution on the regional level is also problematic. At times the centralization of European decision-making is seen in terms of a "Europe of regions," even if some regions coincide with smaller EC nation-states: Ireland, Denmark, The Netherlands, Portugal, Greece and Luxembourg. All have relatively homogeneous internal economic and social systems. Thus the issue of regional sovereignty concerns only the larger states with regions modeled after the German *Länder*. The concept of a "Europe of regions" is thus essentially a program for the devolution of larger nation-states. But it is unlikely that these larger states can be divided into relatively homogeneous socio-economic entities such as Baden-Württemberg and Bavaria. This devolution could not link political spheres horizontally and democratically because the smaller allocation of resources and authority on the regional level would no longer allow the centralized horizontal mediation of differing standards and their political expression. A "Europe of regions" as a substitute for the traditional nation-states would mean that each region would have to have sufficient jurisdiction, revenue, and a centralized system of establishing interests to mediate conflicts and acquire legitimation. If this is not guaranteed, then there is no structural basis for a centralized democracy in a EU. In other words: a *Land* such as Bavaria would be the model for the devolution of the large nation-states into a reconstituted Europe of regional states.

Still unexplored is another concept of regions, namely those relatively homogeneous socio-economic areas of planning and development. In the 12 EC member states today there are 150 such regions that could be split into smaller units, yet they could not be the only supporting entities of European unity. Despite their independent jurisdiction, they would require nation-states to provide financial support and the necessary legitimacy. Suprastate agencies have developed precisely because European nation-states had difficulty in dealing separately with matters such as security, environment, the infrastructure, foreign policy, underdevelopment and economic policy.[12]

EC security interests are still not dealt with on a European level but rather within NATO. This is also true of states outside the EC, with the exception of Ireland, notwithstanding France's special position in

12. Cf. D. Biehl, "Regionalle Entwicklungen und Regionalpolitik in der Gemeinschaft aus föderalistischer Perspektive," in *Pladoyer für Europa Beiträge zur europäischen Einigung*, ed. by Astrid Schomaker, Daniel Gossel and Jens Lehnigk (Hamburg: Verlag Weltarchiv, 1989).

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NATO. Thus security policy is already outside the EC proper. Similarly, if new EC members such as Austria, Switzerland, Finland and Sweden maintain their neutrality, they will have to be excluded from EC jurisdiction for security reasons. Since NATO includes both the US and Canada, it transcends Europe.

Future security tasks are not likely to shrink. It is therefore unlikely that a EU can take over security policy. The tying of former Eastern bloc countries (including the former Soviet Union) to European security institutions enhances the significance of discussions in the CSCE. Lately they have begun to function as a "European Security Council" for conflict resolution. The EC is not in a position to determine autonomously European security policy because it is tied to a multiplicity of "governmental regulations." Nation-states remain the agencies deciding security and foreign policy. As long as they remain members of the UN, CSCE, NATO and other broader organizations, and as long as Great Britain and France are members of the UN Security Council, there can be no binding EC majority decisions in security and foreign policy.

There are good reasons why foreign policy proper, unlike foreign economic policy, has not been coordinated in the EC. Along with the EC, the EPC is only a loose system surpassed by bilateral consultations, regular foreign ministers' meetings, political exchanges within NATO, CSCE agreements, disarmament conferences, the so-called "10 plus" consultations on the UN level, and similar organizations. While the EC may coordinate its members' foreign policy domestically, in foreign relations only the member states are sovereign subjects of international law. For this reason, internationally the representation of European interests falls to the nation-states.

In environmental and developmental policy as well as foreign and security policy, the ability of a EU to act would be as limited in some areas as is that of the nation-states because some problems transcend EC territory as well as its ability to handle them. In view of the internal elasticity of electoral situations and in particular the possibility that large problems can be tackled within a number of smaller domains, there are advantages to a multiplicity of political regimes linked but not institutionally bound. It would be disadvantageous, however, if Europe did not eventually "speak with one voice." If it does not transform its economic power into political influence, it will not be able to respond promptly to crisis situations. But this is not an end in itself.

The EC is certainly not an "independent state" in foreign policy. There are various "external limits" to its autonomy. In view of the

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direct or indirect expansion of the EC to 20-25 full or associate members, the complexity of domestic interests is likely to increase these limitations.[13] As things stand, Western Europe cannot be isolated from international developments. This situation would not change nor would the problems be simplified if the member states' foreign policy and other political concerns were centralized within EC agencies. It does not follow, however, that most member states should not seek internal unanimity, but only that this will not be generated by EC mechanisms such as the European Parliament or the Council of Ministers. An accumulation of EC jurisdictions reduces its ability to function, increases its means of action (looking to the day when it has its own right of taxation) and sharpens legitimation problems. Broadening jurisdictions expands resources and increases legitimacy.

EC success thus far has been predicated on a limitation of jurisdictions and on the coordination of competitive conditions and economic policies within the Common Market. This broad political sphere is crucial for EC economic development and that of its member states. It involves the deregulation of particular arrangements on the state level, their re-regulation on the European level, and the coordination of various particular national regulations. In this context, the development and above all the direct administration of individual programs of inter-European regional and social policy are problematic. They lead to the construction of an independent bureaucracy which, in view of limited resources, is unable to implement structural changes. Direct economic relations have more impact on regional structures and labor markets than bureaucratic interventions. Finally, the EC *Grossraum* is not economically self-sufficient in the world economy. Multinational industrial concerns bind international blocs and generally determine the technological-economic rate of integration.

Although the powers of the nation-states in the EC have been substantially diminished, the latter has not displaced the former. Moreover, the tension between "necessary alliance" and "supranational regime" are not likely to disappear with the evolution of the EC into a EU. It is necessary to recognize this tension in undertaking institutional reform since such relations always bring into sharp focus various

13. Turkey, Malta, Cyprus, Austria and Greece have already applied for full membership, while negotiations are in progress to grant associate membership to the states of the former European Free Trade Association: Iceland, Norway, Finland, Sweden and Lichtenstein. Applications for associated membership are also expected from East European countries and even the newly independent parts of Yugoslavia.

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standards. Since the task is to develop a political regime that unites existing nation-states into a single entity, the sovereign nation-state cannot be a model for a EU. The multinational state could be such a model, although it lacks political traditions and an institutional order.

In multinational states the democratic majority principle is not enough to deal with the interests of individual nationalities. Structurally nationalities are politically organized minorities isolated and unable to become majorities. This is why they need their rights. Both as citizens of a united federation and as part of it, the members of a multinational state have a dual interest in representation. While the part of the federation cannot represent a subordinate area, it represents the nationality *vis-à-vis* the federation as a whole. A principle of equality must obtain between nationalities, irrespective of size. 5 million Danes must be equal to 75 million Germans. There can be no such principle of equality in either a one- or two-chamber parliament without the veto right for every member state. The nationalities' individual rights must be organized on the basis of autonomous national institutions requiring an allocation of jurisdictions between the nationalities within the federation and the federation of nationalities.[14]

EC members are not entering into a EU as nation-states, i.e., as subjects of international law; they merely cooperate in various organizations with different tasks — the UN, the CSCE, NATO, a European environmental agency, a European council on religion, etc. The coordination of these activities is the task of the European Council, which is not an EC agency but one in which all member states participate with equal voting rights and no majority rule. The European Council exercises its influence on the EC through the Council of Ministers. Its legitimation is based on the system of nation-states. Its parliament coordinates the various political spheres and mediates European politics with the nation-states, thus guaranteeing the rights of nationalities. In order to fulfill this function, national parliaments must be "Europeanized," i.e., national interests must be defined within a European context. The central task of these parliaments is the horizontal mediation of political spheres *vis-à-vis* vertically organized bureaucracies and interest groups. Consequently, their European orientation should be strengthened and this task should not be left to the European Parliament.

14. Cf. Emerich K. Francis, *Ethnos und Demos Sociologische Beiträge zur Volkstheorie* (Berlin: Duncker und Humblot, 1965); and M. Rainer Lepsius, " 'Ethnos oder Demos': zur Anwendung zweier Kategorien von Emerich Francis auf das nationalle Selbstverstandnis der Bundesrepublik auf die Europäische Einigung," in Lepsius, *Interessen, Idee und Institutionen*, *op. cit.*

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The EC is and remains a functionally limited "alliance." In principle it is not a political regime above the nation-states. Thus it is not a "federal state" and does not need representative officials such as a European president. The Commission's chairman suffices. Similarly, it does not need direct administration to implement programs such as regional or social funds. The monitoring of living standards in EC member states is the exclusive task of the national governments, which collectively maintain a European budget. To the extent that national bureaucracies do not coordinate standards, there is need for reform. But European officials should not assume these tasks.

Such an organizational model contains tensions and is likely to succumb to institutionalized inefficiency. In both cases the key question is the standards by which any institutionalized order should be judged. Given the multiplicity of such standards, conflicts between them are common with respect both to their range and validity. The degree to which such standards become externalized in other social structures and living conditions is also open to debate, as are the chances of counteracting anticipated adjustments. To this extent, institutional orders are more than the organization of decision-making processes. They define the validity of standards as well as conflicts between them.

The EC is a supranational political regime that became institutionalized for internal and external economic reasons. Since this task involves other political spheres, conflicts are possible. The dominant standard determining all others is the efficiency of trade relations within a large domestic market: the raising of international competition, the innovative power and general political viability of European states, and the like. The result has been economic integration and internal peace, the decline of chauvinism, and the creation of a European identity. But there are other standards, such as social justice, cultural independence, political participation, social solidarity and national identity. A greater allocation of jurisdiction to the EC would expand the range of acceptable standards, which in turn would increase possibilities for conflict within EC agencies and complicate the constitution of a collective will. A lower allocation would homogenize the standards internally and externalize conflict. There are good reasons for assuming that EC success depends on the relative homogenization of standards for collective decision-making. The expansion of jurisdictions on the basis of these standards creates more impetus for accommodation on the part of member states. There are also good reasons for letting the member states make these accommodations themselves. Not only do

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they control the relevant agencies and the structures of legitimation on which European integration as a whole is based, they also constitute a necessary buffer to shield the EC from national resentments, regional crises and employment fluctuations. To the extent that they remain functionally viable, they at least partially contribute to EC legitimacy.

The problem of forming and reforming EC institutions is not that the EC is an "unfinished federal state," as Walter Hallstein has claimed, but that it involves the consolidation of a confederation via a supranational order differentiated and organized to function as a state. In this sense, the EC should remain as it is and not develop into a EU. Thus the differentiation of jurisdictions within the EC should be as exact and explicit as possible. Neither should the EC follow a "logic of interdependence" in political matters, nor should it be the result of the implicit and increasing reduction of the nation-states' activities. The more the latter is the case, the less possible will it be to allocate responsibility. The more member governments defer responsibility to the EC, the greater the pressure on the EC to acquire the means to fulfill these expectations. The reduction of regional disparities and the equalization of living standards cannot be the responsibility of the EC. This political responsibility should remain with member states because they have the sociopolitical means to implement programs. They should retain the means to create necessary incentives for capital investments. It is important to recognize the conflicts which arise in the attempt to coordinate competition in particular domestic markets. The maxim should be: when the jurisdiction is in doubt, it should remain with the member states; when in dispute, it should be decided by the European Supreme Court.

The relation of parliaments and governments in a reconstructed Europe is far more complex than the model provided by the nation-state.[15] The European Parliament is not the parliament of Europe but rather the parliamentary component of the EC. It exists in a relation of tension with the Council of Ministers and retains full decision-making power. It will not be reduced to a second chamber because the member states' sovereignty is guaranteed. To this extent EC subjects are not EC citizens but "citizens of the [Common] Market."[16] The European Parliament guarantees these citizens' participatory rights. By the same token, the Commission is no European government but an independent agency for the administration and development of the economic

15. Cf. Weber, "Parliament and Government in a Reconstructed Germany," in Weber, *Economy and Society*, *op. cit.*

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community. It fulfills this task by initiating legislation. This is why it is necessary to broaden and strengthen the role of national parliaments in European politics. Only recently was it possible for the *Bundestag* to establish a long overdue committee to deal with EC questions. The "Europeanization" of national parliaments promises a greater democratization of European politics than a "denationalization" of the European Parliament. Given the number of new states in the international arena, the control of governments by national parliaments is necessary for the preservation of democratic participation and control. The development of various legal circles and ruling orders, of agencies technically entrusted to establish norms, of new states, of economic, financial and entrepreneurial markets no longer organized on the basis of territorially homogeneous entities, make the reform of [national] parliaments and governments necessary for a reconstructed Europe.

16. Cf. H.-P. Ipsen, "Europäische Verfassung — nationale Verfassung," in *Bitburger Gesprache*, *op. cit.*, pp. 37-53.

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*Federalism and Subsidiarity**

Ludger Kühnhardt

German Reunification and the Challenge of Federalism

German reunification has generated a new interest in federalism. Centralism has been discredited with the end of the Communist Party dictatorship in East Germany. Soon after the outbreak of the "peaceful revolution" the call for unification of the East German *Länder* grew louder, despite the fact that they were created in 1946 by the Soviet Military Occupation. On July 23, 1952 the East German Government enacted the "Law Concerning the Further Democratization of the Construction and Mode of Operation of State Organs in the *Länder* of the German Democratic Republic [GDR]" Concealed behind this euphemistic title was the order to disband. The *Länder* were required to set up administrative districts and to transfer their jurisdictions to them. *De jure* they were never dissolved, but in the GDR constitutions of 1968 and 1974 they were simply not mentioned.

East German discussions concerning the revival of the *Länder* focused on three issues: historically, federalist traditions are strong in German history; emotionally, restoration of the *Länder* was seen as a break with the artificial identity of the GDR and as an expression of a sense of homeland and nation; politically, the construction of a liberal-democratic commonweal required the destruction of the communist apparatus and the reconstitution of the *Länder*.

The 1989 peaceful revolution reversed the order of things. Soon after

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* Translated from "Föderalismus und Subsidiarität: Betrachtungen zu einer deutschen und europäischen Frage," in *Politik und Zeitgeschichte*, Supplement to the weekly *Das Parlament*, Vol. 45, No. 91 (November 1, 1991), pp. 37-45.

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reunification the *Länder* called for the restoration of their original rights.[1] On October 14, 1990, two weeks after reunification, free elections were held in Mecklenburg-Pomerania, Branderburg, Sachsen-Anhalt, Thuringia and Saxony. Similarly, in Berlin on December 2, 1990 parliamentary elections took place in connection with federal elections. On November 9, 1990 the sixteen ministerial presidents of the *Bundesrat* in Berlin were able to meet again for the first time since the Munich Conference of June 6, 1947. The reconstruction of political structures in the new-old federal *Länder* was begun. As in West Germany after 1949, a new legitimacy needed to be established. Wilhelm Röpke, who was skeptical about any state structure, spoke of a "decentralization of mistrust with respect to the impersonal collectivity of the natural gradations from the lowest to the highest level."[2]

Over the years the Federal Republic of Germany has moved in a unitary direction on the basis of Art. 72, § 3 of the Federal Constitution, which standardizes living conditions in the Republic as a whole. Already in 1962 Konrad Hesse came up with the concept of the "unitary federal state" to describe the expansion of federal jurisdictions.[3] In the 1970s Fritz Scharpf and others described the growing tasks of the federal-*Länder* community in line with Art. 91 of the Federal Constitution as "political entanglement."[4] Finally, at the beginning of the 1980s, in a study of the historical significance of German federalism, Thomas Nipperdey observed: "Since 1949 the Federal Republic has become a unitary state. . . . Despite the intentions of the founders, legislation has been shifted increasingly to the federal level. . . . The capacity to function has become the first priority. Traditional federalism tends to be transformed into a functional federalism."[5]

Can this development be reversed by expanding federalism in a reunited Germany? There are positive signs. In the old West German *Länder*, constitutional scholars spoke along these lines as soon as international treaties were signed and steps were taken to reunify

1. Cf. Karl Griewank, *Der neuzeitliche Revolutionsbegriff* (Frankfurt a/M: Europäischer Verlagsanstalt, 1969).

2. Cited by Ernst Deuerlein, *Die historischen und philosophischen Grundlagen des foderativen Prinzips* (Munich: Paul List Verlag, 1972).

3. Cf. Konrad Hesse, *Der unitarische Bundesstaat* (Karlsruhe: C. F. Müller, 1962).

4. Cf. Fritz W. Scharpf, Bernd Reissert, and Fritz Schnabel, *Politikverflechtung: Theorie und Empirie des kooperativen Föderalismus in der Bundesrepublik* (Kronberg: Scriptor Verlag, 1976).

5. Thomas Nipperdey, "Der Föderalismus in der deutschen Geschichte," in Nipperdey, *Nachdenken über die deutsche Geschichte* (Munich: C. H. Beck Verlag, 1986), pp. 101ff.

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Germany.[6] The new, expanded *Bundesrat* has begun to reclaim its constitutional role. It has begun to feel its weight in the political balance.[7]

Clearly, reunification is more than a geographical expansion of the old Federal Republic. Yet problems are already arising in connection with the financial compensation of the *Länder* according to Art. 107 of the Federal Constitution, which concerns the common will and perspective of the *Länder*. What is crucial is the ambivalence between federalism and the basic legal goal of standardizing living conditions. Rebuilding the East German *Länder* will necessarily lead to further federal interventions in the years to come. As has been the case in West Germany, these interventions strengthen a unitary state and, paradoxical as it may sound, weaken federalism in promoting the welfare of the new *Länder*. At any rate, federalism remains an ambiguous historical concept constantly subject to reinterpretation.

Federalism in German and European History

The Roman concept "*foedus*" prefigured federation and alliance. Recognized ancestral lines in Imperial Rome were called "*foederati*." It is unclear whether there already was a federal state in the Grecian-Hellenic Age. What remains undisputed is that the federal principle was already recognized by the Greeks as well as the Romans. The key question of federalism in the Middle Ages had to do with unity and plurality in the organizational structures of the commonwealth as a whole — the many levels from the family to estates and state institutions.[8] Thomas Aquinas, Dante Alighieri and Engelbert von Admont (1250-1331) developed such ideas. Engelbert characterized the Kaiser as responsible for the general welfare, the states, and fulfilling the expectations of the individual peoples. For these thinkers, constitutional considerations went hand-in-hand with the rediscovery of the individual and the socio-economic possibilities of the federal principle.

The old Swiss Confederation, constituted after 1291 as an alliance of free states, was more an association of trust, a loose union that would today be called a confederation [as distinguished from a federal state].[9] The strict idea of federalism was first developed in the context of 16th century

6. Cf. Walter Schmidt Glaeser, *Die Stellung der Bundesländer bei einer Vereinigung Deutschlands* (Berlin: Duncker & Humblot, 1990).

7. Cf. the argument by Josef Isensee, "Idee und Gestalt des Föderalismus im Grundgesetz," in Josef Isensee and Paul Kirchhof, eds., *Handbuch des Staatsrecht* (Karlsruhe, 1990), Vol. IV, pp. 688ff.

8. Cf. Deuerlein, *Föderalismus*, *op. cit.*, p. 22ff.

9. Richard Feller has spoken of a "federal union." Cf. *ibid.*, p. 30.

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theology. In its secularized form, the federal idea arose during the Reformation and became an integral part of political thought. The Franciscan Johannes Eberlin, who in 1521 joined the movement for reformation, published in the same year his utopian political novel, *Fifteen Federalists*, in which he brought together ideas of federation and subsidiarity with respect to prefectures and communities. The decisive formulation of the idea of federalism and its popularization in Germany, however, was the work of Johannes Althusius (1557-1638). In his work, *Politica methodice digesta* (1603), he developed a "system of federal views."[10] He rejected outright the centralized concept of sovereignty developed in Jean Bodin's *De la république* (1576) and opposed to it a stratified society he understood as a "*consociatio*."

The idea of federalism was further developed by the Hanoverian privy councillor and vice-chancellor Ludolph Hugo (1639-1704). In his 1661 *Dissertatio de Statu Regionum Germaniae* he introduced the concept of a constituted federal state.[11] He distinguished between a confederation and a federal state on the basis of historical precedents from the Greek federation to the German territorial states of his own time. In a confederation, member states would retain their sovereignty and independence; in a federal state, political power would be divided between the collective and the individual states. Given Hugo's federal interpretation of the Holy Roman Empire as an intermediary form between a unitary state and a federal union, there could be only individual states or federal unions. His views , however, were overshadowed by those of Jean Bodin and Thomas Hobbes. The maintenance of peace demanded that the sovereignty and unity of state power be indivisible.

The squaring of the circle — a state which embraces many states — was finally accomplished in the US. The Pilgrims and all other colonists came to North America as free men and wanted to remain free. Every colony had its own constitution and lived according to its own rules. It was a circuitous route, until in 1781 the Confederation of the American States was finally able to draft the first federal constitution on American soil. In 1787 the Congress called a meeting of state representatives in Philadelphia to organize a new confederation. The goal was to create a strong central authority by means of a new constitution.

Comparing the origin of the American federal state, the first modern

10. *Ibid.*, p. 35. Cf. the German translation of Johannes Althusius, "Politica methodica digesta" in Erik Wolf, *Quellenbuch zur Geschichte der deutschen Rechtswissenschaft* (Frankfurt a/M: Klostermann Verlag, 1949), pp. 102ff.

11. Deuerlein, *Föderalismus*, *op. cit.*, pp. 39ff.

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type of this state, with the establishment of the *Länder* in East Germany, it is striking that the relation of the central authority to the individual states took more or less opposite forms. Whereas in the US federalism meant the establishment of a federal state through the consolidation of already existing states, in East Germany the project is the destruction of the state apparatus and the decentralization of political decision-making along the lines of a liberal-democratic federal state. These two examples indicate the elasticity of the federal strategy.

The concept of federalism is problematic. Allegedly, the most serious problem has been the antithesis between federalism and democracy. This claim can be made only if federalism is seen as a way to undermine the will of the people by dividing jurisdiction between member states and the federation, or if democracy is understood in the sense of the French Revolution, as a "*république une et indivisible*" which cannot tolerate any separation of powers between otherwise subordinate state levels. Carl Schmitt's *Verfassungslehre* posed the problem of federalism in 1928 in this manner when he wrote about how the "homogeneous unity of the people" fostered by the natural development of democracy would transcend "the political boundaries of member states." Like a natural law, this process ultimately "replaces the equilibrium between the federation and the politically independent member states with a general unity."[12] From this viewpoint Schmitt not only attacked the federal principle but also the liberal character of democracy.

Sub specie libertatis federal and democratic ideas are complementary, if the sole objective is the limiting and ordering of functions. In a federal state like Germany, the separation of powers based on the *Länder* is not only pursued horizontally but also vertically with respect to the *Länder*'s right to participate in the *Bundesrat*.

Federalism does increase the complexities of a political system. Yet arguments that federalism is undermined by democracy are unconvincing.[13] Of course, frictions cannot be ruled out. In 1948 Wilhelm Grewe spoke of the "antinomies of federalism" and, from the viewpoint of the Weimar experience, warned that the instrumentalization of *Länder* authorities by party politics was a threat to federal jurisdictions.[14] After

12. Carl Schmitt, "The Constitutional Theory of the Federation," in this issue of *Telos*, p. 29.

13. Cf. Josef Isensee, "Der Föderalismus und der Verfassungsstaat der Gegenwart," in *Archiv des öffentlichen Rechts*, Vol. 115, No. 2 (1990), pp. 248ff.

14. Wilhelm Grewe, "Antinomien des Föderalismus," in *Recht der Zeit* (1948), No. 3, pp. 3ff. Cf. also Ernst-Wolfgang Böckenförde, "Sozialer Bundestaat und parlamentarische Demokratie," in *Festschrift fur Fritz Schäfer* (Opladen, 1980), pp. 182ff.

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four decades of the German Federal Republic, however, this argument should be reversed: the expansion of possibilities for participation enhances willingness to compromise between *Länder* with various political majorities and consequently promotes recognition of the political system and loosens the political parties' rigid internal order. They seldom see that the relation between the federation and the *Länder* breaks the rigid party establishment because the authority to solve a problem is raised to a higher level. As such, even after German reunification, federalism is not only desirable constitutionally but indispensable politically.[15]

The decisive argument for the affinity of democracy and federalism is conveyed less by political theory than by living reality: in the former East Germany both democracy and federalism were promoted simultaneously. Given that democracy as well as federalism calls for possibilities of political participation, the likelihood of such a political system being accepted by the people increases. In the context of German unification, federalist ideas in East Germany serve democracy and nationhood.

The Principle of Subsidiarity as an Attribute of Federalism

The German president, Richard von Weizsäcker, has emphasized that federalism gives "national consciousness its quality and vigor." Here he has gone far beyond the constitutional context to articulate the sociological dimension of the concept: "It imbues the fabric of life of all Germans. It is a sort of power and a characteristic contribution of Germans in Europe."[16] Already with Althusius federalism was a social principle of organization before it became political. At any rate, "as a social system requiring political form,"[17] federalism must be related to subsidiarity.

The principle of subsidiarity has to do with conditions of subsistence and support. Its Latin root, *subsiduum*, refers to assistance, which should be understood in terms of the smaller matters of life, i.e., strengthening the possibilities of maintaining life on an even keel. The modern concept of subsidiarity stems from Catholic social doctrine. On the basis of the maxim that society exists for the individual and not the opposite, Pope John XXIII's encyclical, *Mater et magistra* (1961), formulated Catholic social doctrine in terms of the classical concept of the person: "Man is

15. Glaeser, *Die Stellung der Bundesländer bei einer Vereinigung Deutschlands*, *op. cit.*, p. 49.

16. Richard von Weizsäcker, "Rede bei der Verleihung der Berliner Ehrenbürgerwürde," in *Frankfurter Allgemeine Zeitung* (June 30, 1990), p. 10.

17. Heinrich Oberreuter, "Föderalismus," in *Staatslexikon*, ed. by the Görres-Gesellschaft, Vol. 2 (Freiburg,1986), p. 632; cf. also Josef Isensee, *Subsidiaritätsprinzip und Verfassungsrecht: Eine Studie über das Regulativ des Verhältnisse von Staat und Gesellschaft* (Berlin: Duncker & Humblot, 1968).

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the bearer, creator and goal of all social institutions."[18]

Mater et magistra reflects the 1931 social encyclical *Quadragesimo anno*, in which the principle of subsidiarity was defined as the highest socio-philosophical norm to order relations between people and communities. Pope Pius XI discussed communal life and the modern division of labor to protect the individual from mass anonymity. "What the individual is able to create through his own initiative and with his own energies should not be taken from him and attributed to social activity, so it is unjust to appropriate for the greater and superordinate community what the smaller and subordinate community creates and contributes to the betterment of the earth."[19] Thus the state should not deal with those matters which can be handled by individual or small units: "Any social activity is both essentially and conceptually subsidiary; it should support the members of the social body, but it must never destroy or absorb them."[20]

The principle of subsidiarity emerged within theological concerns about mass society and as a warning against the "totalitarian experience"[21] that was about to engulf Europe. However, it is a socio-philosophical principle grounded in natural law. As with Pope Leo XIII's 1891 *Rerum novarum*, *Quadragesimo anno* was influenced by German Jesuits. As Owald von Nell-Breuning has pointed out, the principle of subsidiarity in *Quadragesimo anno* can be traced to the influence of Gustav Gundlach's social philosophy. This grand old man of Catholic social doctrine, who died in August 1991 at the age of 101, emphasized throughout his writings the principle of subsidiarity. Nell-Breuning has distinguished a positive and a negative dimension to subsidiarity: it promotes the priority of smaller units and prohibits their repression.[22]

Ultimately, every social association should benefit those concerned. Therefore the goal of subsidiarity is a measure of whether a human association "is of assistance to its members or is only an annoyance."[23] The principle of subsidiarity judges the results of social life. Even within the family no one should be asked to do something beyond their powers and abilities, and all should be assisted to reach their goal and

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18. Johannes XXIII, "Mater et magistra," in *Texte zur katholischen Soziallehre: Die sozialen Rundschreiben der Papste und andere kirchliche Dokumente* (Kevelaer, 1976), p. 259.
19. Pius XI, *Quadragesimo anno* (1931), p. 121.
20. *Ibid.*
21. Karl Dietrich Bracher, *Die totalitäre Erfahrung* (Munich: Piper Verlag, 1987).
22. Oswald von Nell-Breuning, *Baugesetze der Gesellschaft: Solidarität und Subsidiarität* (1986), Second Edition (Freiburg: Herder Verlag, 1990).
23. *Ibid.*, p. 81.

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make themselves into the best person possible. In this sense, the principle of subsidiarity is a formal, normative standard whose key criterion restricts assistance in many areas.

Nell-Breuning connects subsidiarity and federalism. The many layers of political order reflect dualistic thinking, which he takes as constitutive of the principle of subsidiarity. On the one hand, there is the guarantee of true self-administration of smaller units, while, on the other, the superordinate units are tied together in a gradation. In terms outside its constitutional implications, federalism can be seen as "the realization of the principle of subsidiarity in political life."[24] It embraces the principle of subsidiarity but is not identical with it because concretely federalism does not require that the state be ordered according to the principle of subsidiarity. Nell-Breuning argues that federal thinking goes beyond Germany to Europe since "what can be guided only by a European superordinate instance will be ruled by it as well."[25] Federalism is also the solution for Europe.

In a "Europe of Europeans, no less than in any other comparable political structure the size of a continent,"[26] the centralization of tasks should take place only when and where they cannot be accomplished as well or better on a lower level. This is as true of regions, provinces, *Länder*, communities and cities as it is of traditional nation-states. This goes to the core of the European concept of sovereignty, where "sovereignty — according to the traditional concept of a single level — spreads out like an accordion in both directions."[27]

Federalism and the principle of subsidiarity provide a useful perspective for European unification, although the German federal experience corresponds only to that of few other EC member states. A federal structure in Europe has both normative and practical appeal through the principle of subsidiarity. Both federalism and subsidiarity could be realized with the transformation of the EC into a true Political Union.[28]

Toward the "United States of Europe"

The EC member states decided to create a Political Union in 1986 with the Single European Act. Although the fulfillment of this goal requires a further step, it is consistent with the Rome Treaties of 1957

24. *Ibid.*, p. 132.
25. *Ibid.*, p. 132.
26. *Ibid.*, p. 145.
27. *Ibid.*, p. 144.
28. Cf. Werner Weidenfeld *et al.*, *Wie Europa verfasst sein soll: Vorschläge zur institutionellen Weiterentwicklung der Europäischen Gesellschaft* (Gütersloh: Bertelsmann Stiftung, 1990).

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which established the European Economic Community "with the firm intention to create the foundations for an ever closer union of the European peoples."[29] It goes went well beyond a free trade zone and a loose confederation in the direction of a federal state which, on the basis of the principle of subsidiarity, extends decision-making to the center and accommodates demands.[30]

During the 1990s two aspects of this intensified process have become especially significant. The first is to raise democratic legitimacy, meaning that a system of checks and balances must be constructed between EC institutions such as the Commission, the Council of Ministers, the European Parliament and the Supreme Court. The European Parliament should be strengthened to the point that it becomes a true legislative body. The sovereignty of the people and the principle of representative democracy would conform with that of EC member states. On the European level, however, much remains to be done. Strengthening the European Parliament is consistent with the principle of subsidiarity since all EC members would be represented collectively. But this process should be mediated through the introduction of European citizenship and adherence to the 1952 Convention of Human Rights.

The second aspect is the creation of a federal Political Union based on subsidiarity. Individual nation-states can no longer deal effectively with many of their former tasks. Traditional concepts of state sovereignty have been undermined. Transnational economic entanglements, the globalization of financial markets, international ecological concerns and problems of immigration (in particular the right of asylum), and the need to prevent wars are all tendencies promoting a united Europe and leading to a supranational rejuvenation of sovereign rights which have ceased to be the preserve of the nation-state. "The integration of Western Europe is nothing more than the attempt to make those tasks which have been spread abroad again manageable in a political form — an attempt to reconstitute sovereignty on another level."[31] Despite the apprehension (not just in Great Britain) that further European integration will lead to the nation-state's further loss of sovereignty, a strengthening of the EC's jurisdiction is a consequence of these changed conditions.

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29. *EWG-Vertrag: Grundlage der Europäischen Gemeinschaft*, edited and introduced by Thomas Läufer (Bonn: Europa Union Verlag, 1989), p. 16.

30. Richard von Weizsäcker, "Rede zur Eröffnung des Akademischen Jahre des Europa-Kollegs Brügge," in *Bulletin der Bundesregierung*, No. 114 (Sept. 27, 1990), p. 1195.

31. Werner Weidenfeld, "Wer sind wir? Überlegungen zur Identität Europas," in *Frankfurter Allgemeine Zeitung* (December 4, 1989), p. 14.

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Expansion of a federal Europe is consistent with the principle of subsidiarity and proceeds with a common foreign and security policy. Carl Schmitt's classic formula "Sovereign is he who decides on the state of exception" will have to be applied by the EC in the next few years. It should not fall back into a collective security system such as the League of Nations or the "balance of power." "What is on the agenda is the creation of a common European legal sphere to protect us against retreats and to unable us to handle crises. Thus for our security we need a binding and institutionalized network of rules."[32] In order to accomplish this task, the EC must develop as a federal Political Union during the 1990s.

In 1783 the Confederation of American States reached a turning point. The War of Independence had been won, but peace might have vanished without political integration — without federalism. This process created the powerful USA which astounded the world in the next two centuries. Its rise to a world power in the 20th century paralleled the self-destruction of Europe in two world wars and the ensuing ideological and military division of the continent. At the end of the 20th century, at the end of the confrontation between East and West, Europe is again finding itself. The EC has become the most stable factor in this development and has attracted even the newly arisen democracies in Central and Eastern Europe. While the EC must remain open to East European countries, its primary task is to build a federal Political Union. Not unlike North America in the late 18th century, after the Cold War "victory" the new epoch must also be "won" through a European federation. Whether there will one day be a "United States of Europe," the goal is within reach at the end of the 20th century. With Victor Hugo it can be said that it is a matter stronger than armies, an idea whose time has come.

Thus the dynamic character of federalism, grounded in the principle of subsidiarity, has proven a success. Everything new in politics will be mediated by the member states in terms of relations of the whole to its parts, as is natural in an open society such as Europe. Linking integration and autonomy, creating subsidiary federalism, guaranteeing peace and freedom for all: seldom has history offered such possibilities. With the prospect of German reunification and the future of Europe at the end of the 20th century, these ideas can be translated into actions..

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32. Weizsäcker, "Rede zur Eröffnung des Akademischen Jahre des Europa-Kollegs Brügge," *op. cit.*, p. 1197.

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Notes and Commentary:

Leopold Kohr: Prophet of a Federal Europe?

Wolfgang Palaver

Since 1991, more than a dozen states have become independent in Europe, resulting in drastic changes in the continent's political map. These developments bother West Europeans attempting to unify Europe. But is disintegration necessarily incompatible with integration? Fifty years ago Leopold Kohr, an Austrian-born economist, published an article in which he called for the disintegration of the large and powerful European nations as a precondition for a federal Europe.[1] To gain more attention he used a pseudonym (Hans Kohr) in the hope that readers would think the better-known historian Hans Kohn had written the article. The title was inspired by Clarence Streit's best-selling book, which argued that a union of democracies was the best way to confront Hitler.[2] Fifty years later, Kohr looks more and more like a prophet. His 1941 article has attracted much more attention in 1991 then when it was originally published.[3]

Who is Leopold Kohr?[4] Born in 1909 in Salzburg, he studied law and political theory in Innsbruck, Vienna, Paris and at the London School of Economics. In the 1930s, he became a correspondent covering the Civil War in Spain, where he befriended Ernest Hemingway and George Orwell. Subsequently he emigrated to the US to escape Hitler. From 1946 to 1973, he taught economics at Rutgers University, at the American University in Mexico City and at the University of

1. Hans Kohr (Leopold Kohr), "Disunion Now. A Plea for a Society Based upon Small Autonomous Units," in *Commonweal*, Vol. 34 (September 26, 1941), pp. 540-42.

2. Clarence Streit, *Union Now: A Proposal for a Federal Union of the Democracies of the North Atlantic* (New York: Harper & Brothers Publishers, 1939).

3. See Leopold Kohr, "Einigung durch Teilung. Gegen Nationalen Wahn, fur ein Europa der Kantone — ein Vorschlag aus dem Jahr 1941," in *Die Zeit*, No. 43 (October 25, 1991), overseas edition, p. 19. See also John McClaughry, "A Visionary of Disunion," in *New York Times* (December 28, 1991), p. 19.

4. Cf. David Morris, "Leopold Kohr: Early Prophet of the Small is Beautiful Philosophy," in *Utne Reader* (November-December 1990), No. 42, p. 38; Franz Kreuzer, *Die kranken Riesen: Krise des Zentralismus. Franz Kreuzer im Gespräch mit Leopold Kohr, Egon Matzner und Erhard Busek* (Vienna: Franz Deuticke Verlagsgesellschaft, 1981), pp. 7-33.

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Puerto Rico. Thereafter he became professor of political science at the University of Wales in Aberystwyth until 1977. Retired for several years, he now lives in Aberystwyth and Salzburg, and is an advisor to the Baltic Republics.

In 1957 Kohr expanded his 1941 article into a book, *The Breakdown of Nations*, outlining "a new and unified political philosophy centering on the *theory of size*."[5] His main point was that there seemed to be "only one cause behind all forms of social misery: *bigness*."[6] Taking Switzerland as his model, he wrote that small cells such as the Swiss Cantons are preconditions of true democracy and successful federation. He even sought to generalize the Swiss model to all of Europe, fearing that any European federation would result in German hegemony much like Prussia's hegemony in the old German federation. Such a division of Europe would result in the emergence of the old small units like Venezia, Lombardy, Burgundy, Savoy, Estonia, White Russia, etc. According to Kohr, any unionism which is not based on the principle of small states is doomed to totalitarianism.[6]

Kohr's emphasis on the small-state principle led him to become associated with movements seeking to form small independent states. Thus in 1967 he contributed to the creation of Anguilla in the Caribbean. He also participated in the drafting of a constitution for Wales and supported Welsh independence.[7] In the 60s and 70s he further elaborated his analysis and tackled city planning[8] and problems of developing nations. Again he came up with a surprising thesis: the main problem was not underdevelopment but the overdeveloped nations.[9]

Initially Kohr's ideas were not received very well. In the early 1940s some considered him a crank. *The Breakdown of Nations* was dismissed as a "maddening little book."[10] Later in the 70s — after the 1973 oil crisis — the emergence of environmental problems and disenchantment with the idea of constant technical progress, writers influenced by Kohr popularized his ideas.[11] Ivan Illich, who

5. Leopold Kohr, *The Breakdown of Nations* (London: Routledge & Kegan Paul, 1957).

6. Kohr's plea for political particularism does not automatically entail economic particularism. In the economic area he saw two possibilities for sensible unions: international customs (e.g., no barriers on the economic map of Europe) and service unions like the International Postal Union. See Leopold Kohr, *Customs Unions: A Tool for Peace*, Foundation Pamphlet No. 8 (Washington: Foundation for Foreign Affairs, 1949).

7. Leopold Kohr, *Is Wales Viable?* (Llandybie: Christopher Davies, 1971). Cf. Leopold Kohr, *The Breakdown of Great Britain* (London: South Place Ethical Society, 1971). A version of of Kohr's thesis on Wales was extended to Britanny in France. See Leopold Kohr, *Une Bretagne libre est-elle viable ?* Le Cahiers de "L'Avenir de la Bretagne" No. 1 (Quimper: "Nature et Bretagne," 1975).

8. Leopold Kohr, *The City of Man (The Duke of Buen Consejo)* (San Juan: Editorial Universitaria Universidad de Puerto Rico, 1976).

9. Leopold Kohr, *The Overdeveloped Nations: The Diseconomies of Scale* (Llandybie: Christopher Davis, 1977; New York: Schocken Books, 1978); Leopold Kohr, *Development Without Aid: The Translucent Society* (Llandybie: Christopher Davies, 1979; New York: Schocken Books, 1979). Although originally written in English, *The Overdeveloped Nations* first appeared in German (1962) and Spanish (1965).

10. Cf. *The Economist*, Vol. 183, (June 29, 1957), p. 1150.

11. E. F. Schumacher, *Small is Beautiful: A Study of Economics as if People Mattered* (London: Blond & Briggs Ltd, 1973). Schumacher had always emphasized that he learned

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met Kohr in Puerto Rico, readily acknowledges his debt to Kohr: "I was embarrassed to find that the values of smallness, multi-centeredness, effective decentralization, de-professionalization, deceleration and autonomous structuring which our generation has been 'discovering' had been just as clearly and much more humorously formulated by Kohr, before we understood what he was teaching."[12] At any rate, Kohr was awarded the "Alternative Nobel Prize" in 1983.

Today, after the end of the Cold War and the unification of Germany, there are several reasons why Kohr's 1941 article and his *The Breakdown of Nations* deserve attention. Consider Kohr's native country, Austria. Application for membership in the EC and the growing obsolescence of neutrality have brought the major pillars of Austria's identity into question.[13] Thus, Pelinka has proposed Kohr's principle, "small is beautiful," as a solution to Austria's current identity problem.[14] Instead of becoming a part of Germany, trying to be the center of "Mitteleuropa," or taking refuge in Europe's greatness without a clear identity, Austria should accept its small size and take Switzerland as its model. According to Kohr, smallness helps find identity and increases the political quality of democracies.

Kohr's ideas are also relevant for European unification where security could become the guarantor of peace.[15] But some of the problems of collective security, going back to the establishment of the League of Nations, remain. Thus Hans Morgenthau pointed out that an international police force is not possible in a world where giants such as the US and the Soviet Union exist along with smaller states. Such a giant, in combination with one or two second-rate states or small states, can easily exceed the strength of all the remaining states. A police force to ensure security in such a world would have to be gigantic.[16] Kohr's criticism of

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more from Kohr than from anyone else. See Kreuzer, *op. cit.*, pp. 11-13 and 106-08. Schumacher even wrote a foreword to Kohr's book, *The Breakdown of Great Britain*.

12. Ivan Iillich, "Foreword" to Leopold Kohr, *City*, op. *cit.*, p. xii. Cf. Ivan Illich, "Foreword" to Leopold Kohr, *The Breakdown of Nations* (New York: Routledge & Kegan Paul, 1986), pp. vii-xii. One of the similarities between Kohr and Illich is their criticism of "Automobilism." Cf. Kohr, *City*, *op. cit.*, pp. 22-24; Kohr, *Overdeveloped Nations*, *op. cit.*, pp. 103f.; Ivan Illich, *Deschooling Society* (New York: Harper & Row, 1971), pp. 58f. As early as 1955 Kohr said that the necessity of cars in the US is an inconvenience and contributes to the decline of the standard of living. See Morris, *op. cit.*

13. Cf. Herbert Krejci, Erich Reiter and Heinrich Schneider, eds., *Neutralität: Mythos und Wirklichkeit* (Vienna: Signum, 1992).

14. Anton Pelinka, *Zur Österreichischen Identität: Zwischen deutscher Vereinigung und Mitteleuropa* (Vienna: Ueberreuter, 1990), pp. 146-51.

15. Dieter Senghaas, *Europa 2000: Ein Friedenspan* (Frankfurt a/M: Suhrkamp, 1990).

16. Hans J. Morgenthau, *Politics Among Nations: The Struggle for Power and Peace*, 3rd ed. (New York: Alfred A. Knopf, 1963), p. 423. A similar critique was made by Horowitz against Jacques Maritain's model of world government. Cf. Irving Louis Horowitz, *The Idea of War and Peace in Contemporary Philosophy* (New York: Paine-Whitman Publishers, 1957), p. 77: "Unfortunately, while Maritain acknowledges the variations in national cultures, he nonetheless assumes that each nation is economically and politically equal in power; an assumption not reflected in present circumstances." Cf. Jacques Maritain, *Man and the State*, 9th Edition (Chicago: University of Chicago Press, 1951), pp. 188-216.

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collective securityinstitutions is close to Morgenthau's.[17]

According to Kohr, the League of Nations, the Western Union,[18] and the UN were not able to function because they violated the small-cell principle. All these institutions became victims of "political cancer" when they tried to form unions between small and large states. Like Morgenthau, Kohr stresses that such unsuccessful federations require gigantic police forces. Union would be created at the expense of liberty. "For only an executive authority of the most tyrannical omnipotence could keep such uneasy clumsy, and cancerous colossi from disintegration in violent explosion."[19] A world-state suffering from political cancer would tend to be organized like Orwell's *1984*.[20] Great powers are not willing to create institutions so powerful that they would be deprived of their status. Therefore supranational institutions are doomed to failure or exist only as tools of great powers. The UN never became effective because of the Big Five's veto option. A European federation based on the great nations would end in a federation dominated by Germany.[21]

After the end of the Cold War and German unification, Kohr's thesis seems to be rehabilitated today by political realists.[22] Unlike the latter, however, his analysis of the feasibility of international unions does not end with a demonstration of the impossibility of such unions in a world of great and small powers.[23] According to Kohr, the small-cell principle has to be applied in order to create successful federations. In the case of Europe, this means the dissolution of the great powers. In order to have union, first it is necessary to have disunion. The creation of small units are the necessary precondition of successful federations. Today Kohr's basic idea that union needs division and small regional units comes close to those conceptions that emphasize the principle of subsidiarity,[24] the idea of a "Europe of Regions"[25] or models of Europe based on a new "federal

17. Kohr is also a realist who believes that wars will always be fought and cannot be eliminated. See Kohr, *Breakdown of Nations*, *op. cit.*, p. 60. Cf. also Kreuzer, *op. cit.*, p. 9.

18. The Western Union was an attempt to combine Great Britain, France, the Netherlands, Belgium, and Luxembourg into a regional union. See Kohr, *Breakdown of Nations*, *op. cit.*, pp. 181f.

19. *Ibid.*, p. 183.

20. Cf. Kohr, *Overdeveloped Nations*, *op. cit.*, p. 22.

21. Kohr, *Breakdown of Nations*, *op. cit.*, p. 224.

22. Kenneth Waltz, "What Role Should the U.S. Play in the New World Order and What Values Should its Policy Reflect?" A paper delivered at the Center for International Security & Arms Control (Stanford University) March 6, 1992; John J. Mearsheimer, "Back to the Future: Instability in Europe After the Cold War," in *International Security*, Vol. 15, No. 1 (Summer 1990), pp. 5-56. Cf. Andrei S. Markovits and Simon Reich, "*Modell Deutschland* and the New Europe," in *Telos* 89 (Fall 1991), pp. 45-63.

23. Kohr, *Breakdown of Nations*, *op. cit.*, pp. 183f.

24. Cf. Ludger Kühnhardt, "Federalism and Subsidiarity," in this issue of *Telos*.

25. Denis de Rougemont, one of the advocates of a "Europe of Regions," comes very close to Kohr. Already in 1970 he emphasized the need to federalize and regionalize Europe at the same time. See Denis de Rougemont, *Lettre ouverte aux Européens* (Paris: Editions

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populism."[26] Kohr not only explained the general principles that make unions possible, but also ways to eliminate great powers.[27] A European parliament, for instance, should be based on proportional representation of regionally elected delegates. Members of a European parliament would not be French delegates, for example, but delegates of 20 federal districts in France. As an intermediary subunion between Europe and the regional level, France would cease to exist.

Yet, when Kohr was asked if his idea would ever be applied his answer was very pessimistic. The Chapter "But Will it be Done?" in *The Breakdown of Nations* consists only of one word: "No!"[28] In the 1980s, he was similarly negative about the reception of his teachings.[29] But today the explosion of ethnic conflicts, the re-emergence of nationalism in many parts of Europe, and the bloodshed in Yugoslavia make Kohr's concern with problems of nationalism and minorities most relevant. Already in his 1941 article he focused on the problem of nationalism. His solution was the substitution of the nation with the state. Switzerland, which is Kohr's example *par excellence*, is not based on its nations but on many small states. A Europe divided into its historical units would not develop along racial and ethnic lines but result in new combinations such as Lombardy-Savoy or Pomerania-West-Poland, inhibiting the creation of national states.

Kohr thought that the division of Europe into small regional units would not only solve the problem of border territories like Macedonia, Transylvania, Slovakia, Northern Ireland or Alsace, because in a Europe of small autonomous units these regions would cease to be border territories, but also the problem of minorities.[30] "Each . . . could be the sovereign master of its own house, talk its own language when and where it pleases, and be happy in its own fashion."[31] Switzerland created minority states instead of minority rights. Kohr mentions the division of the cantons Unterwalden (13th century), Appenzell (1597) and Basel (1833) into half-cantons, which helped to overcome

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Albin Michel, 1970). In the late 1970s he integrated within his framework Kohr's emphasis on the importance of small units. Although he does not mention Kohr, he does mention Schumacher's book *Small is Beautiful*. See Denis de Rougemont, ed., *The State of the Union of Europe: Report of the CADMOS Group to the European People*, trans. by V. Ionescu (Oxford: Pergamon Press, 1979), p. 70; and Denis de Rougemont, *The Future is Within Us*, trans. by Anthony J. C. Kerr (Oxford: Pergamon Press, 1983), pp. 192-95 and 236. Cf. also Gisela Müller-Brandeck-Bocquet, "Ein föderalistisches Europa? Zur Debatte über die Föderalisierung und Regionalisierung der zukünftigen Europäischen Politischen Union," in *Aus Politik und Zeitgeschichte*, B45/91 (November 1, 1991), pp. 13-25.

26. Paul Piccone, "The Crisis of Liberalism and the Emergence of Federal Populism," in *Telos* 89 (Fall 1991), pp. 7-44. "The task of the new populism is to substitute for the nation-state small autonomous organic communities federalized within a broader framework guaranteeing both cultural particularity and unimpeded economic interaction." (p. 28).
27. Kohr, *Breakdown of Nations*, *op. cit.*, pp. 188-96.
28. *Ibid.*, p.197.
29. Cf. Morris, *op. cit.*; Kreuzer, *op. cit.*, p. 24.
30. Kohr, *Breakdown of Nations*, *op. cit.*, pp. 58-60.
31. *Ibid.*, p. 59.

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internal differences that would have created minority problems.[32] Kohr also tackled the problem of national identity.[33] "The body of irrationalities must be larger the greater the physical size of a country. For the larger a country, the more complex becomes its administration, and the more difficult its far-flung administration, the more imperative is its need to bind its drifting populations together with a network of persuasive conceits of the most lapidary simplicity. The irrational claims to national distinction on the part of large nations must therefore be even more extravagant than those of the usual kind."[34] Though at some level it becomes increasingly difficult to address the irrationalities arising from the identities of competing cultures, small countries are more likely to escape "the vicious hatred and war-inspiring variety."[35]

There is some truth in Kohr's claim that the small-state principle helps solve the problems of ethnic conflict, nationalism and minorities. The Swiss model is compelling. But what about countries and regions in which different ethnic *groups live together in a way that makes geographical separation impossible?* Bosnia-Herzegovina and other parts of Yugoslavia have shown what can occur in such situations. The Baltic republics and other parts of Europe may face similar problems in the future. The principle of self-determination and the creation of small units is not a panacea.[36] Self-determination encourages an homogeneity that tends to suppress those who do not fit into the new unit. "Ethnic cleansing" of the type undertaken in Bosnia-Herzegovina may be the cruel way to create homogeneity. The Duke of Sully, whom Kohr regards as one of his predecessors, proposed a "Grand Design" at the end of the 16th century to divide Europe into 15 states of equal size.[37] His plan also addressed the problem of homogeneity through the division of Europe. But in order to overcome the religious wars of his time, Sully proposed that both Protestant subjects of Catholic sovereigns and Catholic subjects of Protestant sovereigns should be encouraged to emigrate.[38] Applied to Europe's current problems, such a plan would mean streams of refugees as can be seen in Yugoslavia. In Switzerland the importance of homogeneity is well understood. When in 1920

32. Today we can add the creation of the new canton Jura in 1978 to Kohr's examples. The canton Jura, a mainly Protestant and German-speaking region, was separated from the mainly Catholic and French-speaking part of the canton Berne. Cf. Jürg Martin Gabriel, *How Switzerland is Governed*, trans. by K. Gillioz-Pettigrew (Zürich: Schweizer Spiegel Verlag, 1983), pp. 20-24.

33. Kohr, *Overdeveloped Nations*, *op. cit.*, pp. 126-50.

34. *Ibid.*, p. 149f.

35. *Ibid.*, p. 159.

36. Pelinka, *op. cit.*, p.148f., emphasizes that small is not only beautiful but can also be ugly. As examples he mentions some of the dark elements of Swiss democracy. It took a very long time until women in Switzerland were allowed to vote. The legal position of foreigners in Switzerland is worse than in most other European countries. According to Pelinka, smalless is very often hostile to innovation and minorities.

37. Kohr. *Breakdown of Nations*, *op. cit.*, pp. 67f.

38. Cf. Theodore Caplow, *Peace Games* (Middletown: Wesleyan University Press. 1989), p. 103.

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an overwhelming majority of the people of the Austrian province of Vorarlberg decided to join the Swiss Confederation, the Swiss rejected them. One of their main reasons was that they did not want dissenting minorities.[39]

Kohr does not seem to be fully aware of these problems.[40] The small-state principle may in many cases help overcome minority problems. But even more important is a humane and Christian attitude that helps people to live together without resorting to oppressing homogeneity, exclusionary nationalism or ethnic hatred. In regions in which the creation of homogeneous independent units is not possible, such an attitude is the only way to peace. Kohr argues the opposite: "The more enlightened the citizens of a community, i.e., the more they are animated by a Ciceronian attitude of individual reason or a Christian attitude of individual love, the more they tend to weaken the magnetic force radiating from the groups' indispensable belief in its singularity. But the weaker this magnetic force becomes, the more will the community feel compelled to compensate for the subversive wisdom of its members by an all the fiercer insistence on an all the more fanciful tribal mythology."[41] Kohr may be right in his view that a united Europe must be a "Europe of Regions," but he may well be wrong in dismissing reason and compassion as causing a "more fanciful tribal mythology." In the long run, these forces which Kohr correctly calls "subversive wisdom" make the creation of such mythologies more and more unlikely.

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39. Ralf Dahrendorf, *Reflections on the Revolution in Europe: In a Letter Intended to have been sent to a Gentleman in Warsaw* (New York: Times Books, 1990), p. 148.

40. Contrary to Kohr, the federal populist model of European federation avoids these problems that result from an ethnicity based model. Paul Piccone proposes a populist foundation of federalism defined as "a strong vindication of participatory democracy and subsidiarity within relatively autonomous political units." See Paul Piccone, "Federal Populism in Italy" *Telos* 90 (Winter, 1991-92), p. 19. In his article on the crisis of liberalism, Piccone emphasizes the importance of *territoriality* instead of *ethnicity*. See Piccone, "The Crisis of Liberalism . . ." *op. cit.*, pp. 37 and 44. Denis de Rougemont's concept of a "Europe of Regions" takes into account that the persistence of the State-national syndrome on the regional level would create the same problems for minorities as the traditional states. The advantage of the regional level is that the problem is smaller because of the smaller size of the region. But to overcome the problem the principle of the Nation-State has to be substituted by a regional conglomerate of associations. See Denis de Rougemont, *The Future is Within Us*, *op. cit.*, pp. 224-226. The CADMOS report on Europe that was drafted by Rougemont describes regions as "spaces of civil participation," not necessarily linked with ethnic or linguistic identities or economic challanges. More accurately than Kohr, the CADMOS group uses Switzerland to show how a regional phenomenon based on a reaction against state-national centralization is more profound than determining regions in ethnic terms. Some cantons in Switzerland are bilingual or even quadrilingual (Friburg, Valais, Grisons) without this plurality causing serious political problems. The reason for this is that the different ethnic groups have always been able to "participate in the public decisions of their State." In the contrary case of the Jura region, this area was annexed to the canton of Berne in 1814 by the Great Powers. The people of Jura were not masters of their own destiny. The creation of a separate Jura canton was the logical outcome of that decision taken over the people's heads. See Denis de Rougemont, *The State of the Union . . .*, *op. cit.*, p. 63ff.

41. Kohr, *Overdeveloped Nations*, *op. cit.*, p. 147.

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Disunion Now: A Plea for a Society Based upon Small Autonomous Units (1941)

Leopold Kohr

We like to believe that the misery into which the world has come is due to the fact that humanity is split into too many countries. And we like to believe that all the evils of our globe would be eliminated by simply doing away with the variety of states through uniting — the democracies now, the continents later, the world in the end. The usually cited examples for the feasibility of such unions are the United States of America and Switzerland.

As far as the United States is concerned, it is not a model after which Europe could be reshaped because it is not a union of different entities. There is no real differentiation between the peoples, languages, customs and races living in the various states. There is only one people, the American, living in the United States, which is plural in its name but not in fact. The United States *are* not a country, it *is* a country. The only lesson which can be drawn from its constitutional picture is that in spite of the uniformity of type it has produced, it was found more practicable to subdivide it into 48 states instead of trying to govern the entire continent through delegates from Washington. Thus *differentiations* were artificially created because this proved to be an easier way to achieve union than *unification*.

But more than the United States, it is Switzerland which is regarded as the proof of the feasibility of the unionist dreams even for the continent of Europe where they have neither a uniform type of continental man, nor a common language, nor a common cultural and historical background. There, in a tiny spot in the Alps, three arch-enemies — Italians, Germans and French — have united for the common purpose of freedom, peace and economic happiness. Switzerland, to the unionist, is the eternal example of the practicability of the living together of different nations, and for this reason, he praises her as his holy land.

But in reality Switzerland, too, proves something quite different from what she is meant to prove. The percentage of her three national groups (not speaking of the Romanche, her fourth nationality) is roughly 70% for the German, 20% for the French and 10% for the Italian speaking population. If these three national groups as such were the basis of her much-famed union, it would

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* Originall published in *The Commonweal* (September 26, 1941) under the pseudonym Hans Kohr. Republished in German in *Die Zeit* No. 43 (October 25, 1991), p. 19.

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inevitably result in the domination of the large German speaking block over the other two nationalities, who would be degraded to the logical status of minorities representing only 30% of the total population. Indeed, the rules of democracy would favor this development, and the reason for the French and Italian speaking communities remaining in a chiefly German enterprise would be gone. No sense could be found in their keeping away from the more logical reunion with their own blood-relatives, who, through their number, have formed the powerful nations of Italy and France. No more sense could there be for the Germanic block to stay outside the Reich.

In fact the basis of the existence of Switzerland and the principle of living together of various national groups is not the federation of her three nationalities but the federation of her 22 states, which represent a *division* of her nationalities and thus create the essential precondition for any democratic federation: the physical balance of the participants, the approximate equality of numbers. The greatness of the Swiss idea, therefore, is the smallness of its cells from which it derives its guaranties. The Swiss from Geneva does not confront the Swiss from Zurich as a German to a French confederate, but as a confederate from the Republic of Geneva to a confederate from the Republic of Zurich. The citizen of the German-speaking Uri is as much a foreigner to the citizen of the German-speaking Unterwalden as he is to the citizen of the Italian-speaking Tessin. Between the canton of St. Gallen and the Swiss federation there is no intermediary organization in the form of "German-speaking cantons." The power delegated to Berne derives from the small member republic and not from the nationality, because Switzerland is a union of states, not of nations. It is important to realize that in Switzerland there live (in rough numbers) 700,000 Bernese, 650,000 Zürichois, 160,000 Genevese, etc., and not 2,500,000 Germans, 1,000,000 French and 500,000 Italians. The great number of proud, democratic and almost sovereign cantons, and the small number of the individual cantonal populations eliminates all possible imperialist ambitions on the part of any one canton, because it would always be outnumbered by even a very small combination of the others. If ever, in the course of contemporary simplification and rationalization, an attempt to reorganize Switzerland on the basis of its nationalities should succeed, the 22 "superfluous" states with all their separate parliaments and governments would become three provinces: not of Switzerland, however, but of Germany, Italy and France.

Cantonal Sovereignty

People who argue for a union of nations in Europe because they believe that *this* kind of union has been realized and thus proved its practicability in Switzerland, have never based their wonderful schemes on the principle of cantonal or small-state sovereignty. The *national* idea has so much troubled the minds of the political thinkers that, in contrast, the notion of *state*, which is so much more flexible, adaptable and multipliable than that of *nation*, has almost completely gone out of use. For virtue has been seen only in great and

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greater entities, while smaller entities have been thought and taught to be the source of all mischief and evil. We have been educated in the worship of the bulk, of the large, of the universal, of the colossal, and have come away from the miniscule, the completeness and universality on the smallest scale — the individual, which is the protoplasm of all social life. We have learned to praise the unification of France, Britain, Italy and Germany in the belief that they would give birth to a unified humanity. But they created only Great Powers.

If the Swiss experience should be applied to Europe, also the Swiss technique — not merely the appearance of its result — will have to be employed. This consists in the dividing of three or any number of unequal blocks into as many smaller parts as is necessary to eliminate any sizable numerical preponderance. That is to say that one should create 40 or 50 equally small states instead of 4 or 5 unequally large ones. Otherwise even a federated Europe will always contain 80 million Germans, 45 million French, 45 million Italians, etc., which means that any European federation would end up in a German hegemony with just the same inevitability as the German federation, in which 24 small states were linked to the one 40-million power of Prussia ended up in Prussian hegemony.

The suggestion, therefore, is to split Germany into a number of states of seven to ten million inhabitants. This could be easily done since the former German states (or a number of them) could be reconstructed, and even Prussia could be divided on a natural and historical basis. The splitting up of Germany alone, however, would have no permanent effect. With the natural tendency of all growing things, Germany would reunite unless the whole of Europe were to be cantonized at the same time. France, Italy and Russia must be divided too. Also in their cases their historical backgrounds would make the task easy: we shall again have a Venezia, a Lombardy, a Burgundy, a Savoy, an Estonia, a White Russia, etc. But as with the German states, here also the new (or old) entities would again grow together on racial lines unless they be brought together in *new combinations* making the creation of national states impossible. That is to say, the true meaning of Switzerland or the Austro-Hungarian empire will have to be realized in many new instances: the small states would be federated, but not with their nearest relative, so that the new map of Europe might show a Pomerania-West-Poland, and East-Prussia-Baltica, an Austro-Hungary-Czechoslovakia, a Baden-Burgundy, a Lombardy-Savoy, etc. Then the Great Powers, which are the womb of all modern wars, because they alone are strong enough to give to war its modern frightfulness, shall have disappeared. But only through splitting up the entire continent of Europe will it be possible to eliminate honorably Germany or any other Great Power without having to inflict on any the odium of a new Versailles. Once Europe is divided into small enough parcels, we shall have the Swiss foundation of a Pan European Union, based not on the collaboration of powerful nations but on the smallness of *all* the states.

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Glorifying the Small

All this is a defense of a much-ridiculed principle which glorifies the sovereignty of the smallest and not of the largest state-entity — *Kleinstaaterei*, as the Germans say. The theorist of our time who seem to be able to see only the large and get emotional over words like "humanity" (no one knows what it really means and why one should *die* for it) call the very idea of creating more instead of fewer states medieval backwardness. They are all out for unionism and colossalism, though unionism is nothing really but another expression for totalitarianism, even if it is thought to be a guarantee for peace. It is the one-party system transplanted into the international field. Against the scorn of our theorists I would like to point out only a very few of the advantages of this "medieval" scheme. The unionist will say that the time when hundreds of states existed was dark and that wars were waged almost continuously. That is true. But what were these wars like? The Duke of Tyrol declared war on the Margrave of Bavaria for a stolen horse. The war lasted two weeks. There was one dead and six wounded. A village was captured and all the wine drunk which was in the cellar of the inn. Peace was made and $35 paid for reparations. The adjoining Duchy of Lichtenstein and the Archbishropic of Salzburg never learned that there had been a war on at all. There was war in some corner of Europe almost every day, but they were wars with little effects. Today we have relatively few wars, and they are for no better reason than a stolen horse. But the effects are tremendous.

Also economically the advantages of the coexistence of many little states were enormous, although the modern synchronizers and economists will not agree with this since they have got accustomed to see the world standing on their heads. Instead of one administration we had twenty, instead of two hundred parliamentarians we had two thousand, and, thus, instead of the ambitions of only a few the ambitions of many could be satisfied. There were no unemployed because there were too many identical professions which competed less because they were exercised in more countries. There was no necessity for socialism (another totalitarian notion), because the economic life of a small country could be supervised from any church tower without the interpretations (brilliant though they be) of a Marx or Schacht. There was the development of the arts in the many capitals which excelled in the creation of universities, theater and in the production of poets, philosophers and architects. And there were no more taxes than we have now, in the age of rationalization, where people and enterprises have been "economized" for economic reasons and the phenomenon of unemployment has come into existence. We have done away with what we thought was the waste of courts and kings and have created thereby the splendor of the dictators' marching millions. We have ridiculed the many little states; now we are terrorized by their few successors.

Not only history but also our own experience has taught us that true democracy in Europe can only be achieved in little states. Only there the individual can retain his place and dignity. And if democracy is a worthwhile idea,

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we have to create again the conditions for its development, the small state, and give the glory of sovereignty (instead of curtailing an institution from which no one wants to depart) to the smallest community and to as many people as possible. It will be easy to unite *small* states under one continental federal system and thus also satisfy, secondarily, those who want to live on universal terms. Such a Europe is like a fertile inspiration and a grandiose picture, although not a modern one which you paint in one dull line. It will be like a mosaic with fascinating variations and diversity, but also with the harmony of the organic and living whole.

This is a ridiculous scheme, conceived for man as a witty, vivacious and individualistic reality. Unionism, on the other hand, is a deadly serious scheme without humor, meant for men as a collectivity and as social animals of lower order; and it reminds me constantly, in all its earnest elaborateness of the German professor who submitted to Satan a new plan for organizing Hell. Whereupon Satan answered with rock-shaking laughter: "Organize Hell? My dear Professor, organization, that *is* Hell."

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Carl Schmitt Hysteria in the US: The Case of Bill Scheuerman

George Schwab*

As can be seen from the number of works and commentaries now available in translation, Schmitt studies are alive and well in the US. Also symptomatic of this phenomenon are the categories of commentators: Schmitt scholars; Left-Schmittians; and Right-Schmittians. Bill Scheuerman has added another category he calls "young Schmittians," and Scheuerman himself is a member of the not inconsiderable cohort of crude Schmittians.

In a review[1] of Bernd Rüthers' *Carl Schmitt im Dritten Reich*,[2] instead of discussing the book Scheuerman launches a broadside against what he calls "young Schmittians" — especially the American ones. He holds them responsible for "the so-called Schmitt renaissance that has taken place both in North America and Western Europe in the last decade" and characterizes this development as a "fine example of how intellectuals can contribute to 'societal unlearning' " (71). Allegedly, their "political orientations are as often 'leftist' as neoconservative," and they are succeeding in attracting "an increasing number of scholars [who] have no reservation whatsoever in borrowing one aspect or another of [Schmitt's] thinking for their own rather confused political and intellectual projects." How did the so-called young Schmittians succeed in bringing about such a renaissance? "Critical to the young Schmittian agenda is an attempt to minimize Schmitt's complicity in the horrors of Nazi barbarism." Once sanitized, Schmitt "becomes legitimate pickings for varieties of "post-Marxism," "post-modernism," or just "plain straightforward neoconservatism" (72).

After condemning the purported young Schmittians for skewing the record of Schmitt's Nazi past, Scheuerman unleashes *ad hominem* attacks against its purported "elder statesman," i.e., myself. His purpose is to neutralize the impact:

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* This is an edited version of a contribution to a forthcoming *Festschrift* in honor of Hans-Joachim Arndt edited by Volker Beismann and Markus Klein, *Politische Lageanalyse* (Bruchsal: San Casciano Verlag).

1. "Carl Schmitt and the Nazis," in *German Politics and Society*, No. 23 (Summer 1991), pp. 71-79. From Scheuerman's citation of the relevant publication data it is clear that he is unaware that the book is a considerably enlarged version of the first edition and that the study's subtitle is *Wissenschaft als Zeitgeist-Verstärkung?* All subsequent references to this review will be indicated within brackets in the text.

2. Second ed. (Munich: C. H. Beck Verlag, 1990).

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"One can only hope that Bernd Rüthers' book will discourage more scholars from rushing to hop on the young Schmittian bandwagon" (78). Although my name does not appear in Rüthers' study, Scheuerman attacks my "rather poor book," *The Challenge of the Exception*,[3] which, "especially in the Anglo-American world" is "widely cited . . . and has played a crucial role in resurrecting Schmitt" (79n.). Scheuerman's other *bête noire* is Joseph W. Bendersky, a historian who Rüthers does cite.[4] Scheuerman accuses me of (a) "underplaying [Schmitt's] Nazi past," an accusation also leveled against Bendersky, and of (b) being "the chief proponent of the now widely held 'lip service' thesis about Schmitt's role in the Nazi dictatorship" (72).

But how can Scheuerman claim that Bendersky and I underplay Schmitt's "Nazi past" and on the very same page acknowledge that "both authors devote much of their discussion of Schmitt's whereabouts in Nazi Germany to detailing the active role he played in trying to court influence among the Nazi elite." He tries to devise a quick fix by zeroing in on Schmitt's anti-Semitism and by charging that Bendersky and I minimize it. This strategy, however, does not work. Even a cursory look at Bendersky's work and mine will evidence that as far as the Nazi period is concerned Schmitt's evolving anti-Semitism is presented extensively and not, as Scheuerman puts it, unwillingly: "continually forced to cite" it (73). Because no traces of anti-Semitism can be found in Schmitt's work before Hitler's rise to power, Bendersky and I traced its evolution and came to the same conclusion that Schmitt's anti-Semitism reached its zenith toward the end of 1936, during the notorious "Conference on Judaism in Jurisprudence." At that gathering Schmitt characterized the Jewish intellect as "unproductive," "sterile," and "parasitic."[6] Bendersky and I concluded that Schmitt's anti-Semitism was opportunistic. According to Bendersky: "Not only did [Schmitt] compromise in order to protect himself personally and professionally, but he was quickly seduced by the rewards offered him by the new system. . . . Later, when threatened by the ideological purists in the party, Schmitt took up the anti-Semitic cause as a means of proving his ideological conversion. Fear, ambition, and vanity each played a role in determining the way Schmitt reacted to the changing circumstances under which he lived and worked during these years. My purpose in describing the various motivations and events which led Schmitt to make such compromises was to try to understand his behavior, not to excuse it. For his writings and actions during this phase were indeed reprehensible."[7]

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3. (Berlin: Duncker & Humblot,1970). Scheuerman appears unaware of the second edition which appeared in 1989 (New York/ London: Greenwood Press).

4. *Carl Schmitt: Theorist for the Reich* (Princeton: Princeton University Press, 1983).

5. A contrary view is offered by Richard Wolin, who writes that Bendersky confronts "Schmitt's deep Nazi involvements, as well as his at times vicious anti-Semitism, head on." *The Terms of Cultural Criticism: The Frankfurt School, Existentialism, Poststructuralism* (New York: Columbia University Press, 1992), p. 231n.

6. See Schwab, *The Challenge of the Exception*, *op. cit.*, pp. 135, 136.

7. Bendersky, *op. cit.*, pp. 281-282.

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I have addressed the question of Schmitt's anti-Semitism again in 1975 and, after reviewing the evidence, I concluded that by 1936 Schmitt's style and tone had undergone a considerable change.[8] Confronted with severe criticism by, among others, committed old Nazis[9] who reminded him of his pre-Nazi past and the alleged dissemination of un-Nazilike doctrines in his writings since 1933, Schmitt began to sound like a rabid anti-Semite. Clearly he was concerned about his professional future and perhaps even his life in the rapidly emerging SS state. To convince the Nazi hierarchy of his sincerity he began to attack Jews: "Schmitt applied for an insurance policy with the Nazis at the expense of the Jews, but to no avail. The policy was returned on December 10 1936, in the form of a vitriolic attack" in the SS organ *Das Schwarze Korps*.[10] This notorious paper characterized Schmitt as an opportunist and warned him to refrain from posing as a Nazi.

In substantiating his charge that Bendersky and I minimize Schmitt's anti-Semitism, Scheuerman cites Rüthers' book as providing "correctives to the American literature" (75). But Rüthers' work claims exactly the opposite. He reports that until Schmitt's commentary on the Nuremberg laws of 1935, "he [Schmitt] concerned himself only incidentally (*nur beiläufig*) with the racist nucleus of the National Socialist Weltanschauung."[11] Only in response to mounting attacks on him by such Nazi stalwarts as Karl August Eckhardt, Otto Koellreutter, Reinhard Höhn, and the emigrant Waldemar Gurian, among others,[12] on issues such as the proper understanding of Nazi political thought and his pre-1933 past, especially his association with Jews,[13] did Schmitt, according to Rüthers, begin to "immunize himself against such attacks" at the Jews' expense.

Scheuerman's second charge is based on my observation that "Schmitt paid some lip-service to the terminology of National Socialist propaganda," which I interpret to mean that "Schmitt was never a 'true Nazi,' first and foremost because he never subscribed to biological racism supported by leading Nazi ideologues" (72). This is valid, and since I came to this conclusion in 1970 in *The Challenge of the Exception* no other evidence has come to light. Underlying

8. See George Schwab, "Carl Schmitt: Political Opportunist?" in *Intellect*, Vol. 103, No. 2363 (February 1975).

9. *Ibid.*, p. 336.

10. *Ibid.*, p. 337.

11. Rüthers, *op. cit.*, p. 96.

12. *Ibid.*, pp. 81-88, 92-95. Cf. Rüthers' numerous references to Bendersky, *op. cit.*

13. Rüthers, *op. cit.*, pp. 69-70, 96. See also my "Carl Schmitt: Through a Glass Darkly" in *Schmittiana - Eclectica*, 2nd ed. (1988) Nos. 71-72, p. 81n.; and Bendersky, *op. cit.*, pp. 224-226, 229. In rereading the SD files and parts of *Deutsche Briefe 1934-1938: Ein Blatt der katholischen Emigration*, ed. by Heinz Hürten (Mainz: Matthias-Grünewald-Verlag, 1969) 2 Vols., the thesis that emigrants played no role in furnishing material on which the SS built its vehement case against Schmitt cannot be substantiated. See Manfred Lauerman, "Exkurs Carl Schmitt 1936" in *Die Autonomie des Politischen: Carl Schmitts Kampf um einen beschädigten Begriff*, ed. by Hans-Georg Flickinger (Weinheim: Acta humaniora, 1990), pp. 122-126.

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Scheuerman's charge is a commonplace confusion about the relation between anti-Semitism and biological racism in Nazi Germany. I identified Schmitt's acquired anti-Semitism, whose roots can be traced to theology, but stated that when he interjected the phrase "blood and soil" in his writings he did so artificially because it is out of harmony with the style and substance of his works.[14]

If Scheuerman had bothered to acquaint himself with the material, he would have discovered that on the question of race, *Das Schwarze Korps*, in its celebrated attacks on Schmitt in December 1936, reached a similar conclusion. It lambasted him for what he had to say about biological racism during WWI. When, according to *Das Schwarze Korps*, "the best part of German youth bled to death at the fronts" Schmitt claimed that "the whole romanticism of race teaching rests on similar, namely morphological speculations, and persons who like to call themselves *Realpolitiker*, make natural scientific, presumably race differentiations valid, but basically they mean moral significances."[15] However much one may sympathize with Scheuerman's outrage about Schmitt's anti-Semitism, it is inaccurate to lump Christian anti-Semitism with biological racism.[16] As Scheuerman should know, in 1936 there were very few Germans, including Jews, who anticipated anything remotely resembling the Holocaust. Though it seems unlikely that the Holocaust would have been possible without the anti-Semitism that the Christian churches fanned for so long, church-inspired anti-Semitism is not identical to biological racism.

Because Scheuerman makes so much of my "lip-service thesis," one would expect it to be an integral part of the work he is reviewing. Not so. Rüthers mentioned the "lip-service thesis" once and only in passing, in the context of Schmitt's controversial 1934 article "Der Führer schützt das Recht,"[17] written immediately after the Röhm affair. As is well known, at the time there was friction in Germany between the SA and the Nazi central power threatening to erupt into a conflict. In the face of that threat, Hitler ordered the execution of Röhm, the head of the SA, and his immediate entourage. In addition to the SA leaders, others not implicated in the alleged conspiracy, including Schmitt's good acquaintance von Schleicher, were murdered.

In commenting on Schmitt's approbation of the action against the SA leadership, critics often omit his entreaty to Hitler as the protector of the law to punish those who had transgressed it. According to Schmitt, the individual responsible

14. *The Challenge of the Exception*, *op. cit.*, pp. 101, 136,137 and 138.

15. "Es wird immer noch peinlicher," December 10, 1936, p. 2. The reference is to Carl Schmitt's *Theodor Däubler's "Nordlicht": Drei Studien über die Elemente, den Geist und die Aktualität des Werkes*, second ed. (Berlin: Duncker & Humblot, 1991), p. 15. In the *Glossarium* by Carl Schmttt, ed., Eberhard Freiherr von Medem (Berlin: Duncker & Humblot, 1991) he characterizes the issue of race as a "swindle" (entry II /7/49, p. 256).

16. *The Challenge of the Exception*, *op. cit.*, p. 138. See also Reinhard Mehring, *Pathetisches Denken, Carl Schmitts Denkweg am Leitfaden Hegels: Katholische Grundstellung und antimarxistische Hegelstrategie* (Berlin: Duncker & Humblot, 1989), p. 179.

17. Reprinted in *Positionen und Begriffe im Kampf mit Weimar-Genf-Versailles 1923-1939* [1940], Second printing (Berlin: Duncker & Humblot,1988), pp. 199-203.

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for the decision to eliminate the threat is also responsible for "protecting the law from the worst abuse."[18] Though the murders were committed not all that long after Hitler's accession to power, by then his methods were well known. In view of Hitler's ruthlessness, I concluded that Schmitt's "appeal to Hitler's sense of responsibility" was "somewhat naive."[19]

Rüthers' brief reference to the "lip-service thesis" and his citation of Günter Maschke were made in the context of the Röhm affair. Given that situation, he interpreted Schmitt's appeal to Hitler not as "somewhat naive" but as "clever [and] bold."[20] At any rate, Rüthers' conclusion parallels mine, albeit for different reasons. Speaking of Schmitt's plea, Rüthers asked rhetorically: "Who should have benefitted by it?" After all, who did Schmitt call on to become the "defender of the legal order?" Answer: "The murderer with the fresh blood of friends on his hands." In essence, Scheuerman's broadside on "the lip-service thesis" has nothing to do with the context in which Rüthers *made reference to it or to Rüthers' conclusion that "Schmitt's justification of* the murder . . . appear[s] then as today barely understandable."[21]

Scheuerman's review is fraught with so many errors and distortions that one would have to write a monograph to correct them all. For example, he charges the so-called young Schmittians in general and Bendersky in particular with having transformed "Schmitt into a real 'victim' of National Socialism." "Bendersky thinks he can pull [this] . . . off by focusing on the now famous feud between the SS and Schmitt" (73). Although Bendersky did not characterize Schmitt as a victim of Nazism in the true sense of the word, he concluded, as I did before him, that an attack in *Das Schwarze Korps* was something to be reckoned with[22] and not, as Ingo Müller has claimed, that Schmitt merely "fell slightly out of favor."[23] In numerous conversations with me Schmitt

18. Schmitt, "Der Führer schützt das Recht," *op. cit.*, p. 200.
19. Schwab, *The Challenge of the Exception*, *op. cit.*, p.132, also 130-131.
20. Günter Maschke, *Der Tod des Carl Schmitt* (Vienna: Karolinger, 1987), p. 73.
21. Rüthers, *op. cit.*, p. 80.
22. Bendersky, *op. cit.*, p. 240.
23. *Hitler's Justice: The Courts of the Third Reich*, trans. by Deborah Lucas Schneider, with an introduction by Detlev Vagts (Cambridge MA: Harvard University Press, 1991), p. 44. Schmitt's anti-Semitic outbursts in connection with the attacks on him by *Das Schwarze Korps*, which have for decades been ignored, have, recently engendered considerable discussions. For example, in trying to explain Schmitt's anti-Semitism as an endeavor to deflect attention from his past, Vilmos Holczhauser is factually incorrect when he asserts that the only targets of Schmitt's diatribes were dead Jews. [Cf. *Konsens und Konflikt: Die Begriffe des Politischen bei Carl Schmitt* (Berlin: Duncker & Humblot, 1990), p. 270n.]. Also, one of Helmut Quaritsch's theses is that Schmitt's "Byzantine exaggerations," according to which the "ideological convert felt compelled to surpass all other jurists in their "loyalty to the Führer and in their anti-Semitism," should, perhaps, be looked at as a "parody of himself." That Schmitt was capable of doing so cannot be denied, says Quaritsch correctly. But given the situation in 1936, Quaritsch strongly implies that this was no time for such games. [Cf. *Positionen und Begriffe Carl Schmitts*, 2nd ed. (Berlin: Duncker & Humblot, 1991), pp. 109-110].

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admitted that in order to escape from the morass even the idea of leaving Germany passed his mind but that he did not entertain it seriously. With the possible exception of Leo Strauss, he had lost his German and German-Jewish friends and acquaintances abroad. Strauss, in Schmitt's words, "never joined the anti-Schmitt baiting."[24] Among the lost friends and acquaintances he mentioned were Franz Neumann, Otto Kirchheimer, and Carl Joachim Friedrich.[25] Because of his reaction to what had transpired in Nazi Germany, Schmitt believed that the likelihood of his becoming gainfully employed was slim.

Schmitt's experience with the SS clearly had a sobering impact on him. For the first time he learned the meaning of Hobbes' concept of the relation between protection and obedience, a principle to which he often and approvingly referred. Though Schmitt did not choose to resist the legally constituted authority that, he believed, threatened him, his immediate reaction was to turn his attention away from Nazi domestic matters in favor of an investigation of the symbolic meaning of the leviathan in Hobbes' political theory. In that study he anticipated the early demise of the Thousand-Year Reich.[26]

Scheuerman's treatment of Schmitt's *The Concept of the Political* reflects his failure to read the text. He states that "political violence" is central to Schmitt's thesis (78). The fact of the matter is that as a political realist Schmitt harbored no illusions about the nature of man. Sharing the view of human nature that informs the writings of other political realists, he stated that man is "by no means an unproblematic but a dangerous and dynamic being."[27] Given this assessment, he entertained no hope of constructing a world devoid of conflict or characterized by perpetual peace. This does not suggest, however, a continual *bellum omnium contra omnes*. In contrast to what Scheuerman ascribes

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24. In October 1933 Strauss complained to a friend that Schmitt had failed to reply to a letter he had written him on July 10, 1933. (For the text of the letter and complaint see Heinrich Meier, *Carl Schmitt, Leo Strauss und "Der Begriff des Politischen": Zu einem Dialog unter Abwesenden* (Stuttgart: J. B. Metzlersche Buchhandlung, 1988), pp. 134-135, 137-139). In an answer to my question of why he failed to answer Strauss' letter, Schmitt replied: "I had to remain consistent."

25. For a discussion of Neumann's and Kirchheimer's intellectual debt to Schmitt, see Keith Tribe's introduction to *Social Democracy and the Rule of Law: Otto Kirchheimer and Franz Neumann*, ed. by Keith Tribe, trans. by Leena Tanner and Keith Tribe (London: Allen & Unwin, 1987), pp. 1-26. On Neumann, despite factual errors, see also Rainer Erd's *Reform und Resignation, Gespräche über Franz L. Neumann* (Frankfurt a/M: Suhrkamp Verlag, 1985). On Friedrich's intellectual indebtedness to Schmitt, see my "Carl Schmitt: Through a Glass Darkly," *op. cit.*, pp. 72-74.

26. Carl Schmitt, *Der Leviathan in der Staatslehre des Thomas Hobbes: Sinn und Fehlschlag eines politischen Symbols* (Hamburg: Hanseatische Verlagsanstalt, 1938), pp. 69, 111-114, 127 (English translation forthcoming).

27. *The Concept of the Political*, trans., introduction, and notes by George Schwab. With Comments on Schmitt's Essay by Leo Strauss. (New Brunswick: Rutgers University Press, 1976), p. 61. See also Rüdiger Kramme, *Helmuth Plessner und Carl Schmitt, Eine historische Fallstudie zum Verhältnis von Anthropologie in der deutschen Philosophie der zwanziger Jahre* (Berlin: Duncker & Humblot, 1989), pp. 16, 17, 197ff.

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to him, Schmitt claimed that war "does not have to be common, normal, something ideal, or desirable." Speaking of his definition of the political as the criterion to be used to distinguish between friend and enemy,[28] Schmitt explained that it "neither favors war nor militarism, neither imperialism nor pacifism. Nor is it an attempt to idealize the victorious war or the successful revolution as a 'social ideal,' since neither war nor revolution is something social or something ideal."[29]

Because of his erroneous ascription of violence as central to Schmitt's concept of the political, Scheuerman has no difficulty in concluding that from Schmitt's insistence "on the necessity of 'homogeneity' in modern political communities" it can be adduced that the term "most likely" meant "racial or national" harmony (78) and may very well have served to promote the physical destruction of the heterogeneous. But even before the appearance of *The Concept of the Political*, in his critique of liberalism, Schmitt wrote that "homogeneity" is a criterion of democracy and not of liberalism and that the "exclusion or destruction of the heterogeneous" may well be necessary.[30] He immediately proceeded to illustrate what he had in mind. Instead of citing the Armenian massacres as an example, Schmitt cited two other examples of modern democracy: "contemporary Turkey, with its radical expulsion of Greeks and its systematic Turkish nationalization of the land, and the Australian commonwealth, which excludes unwanted immigrants through its immigration laws . . . . Equality . . . can be found in certain physical and moral qualities, for example, in civic virtue, in *arete*, the classical democracy of *vertus* (*vertu*). In the democracy of English sects during the 17th century equality was based on a consensus of religious beliefs. Since the 19th century it has existed above all in membership in a particular nation, in national homogeneity."

Despite Schmitt's critique of the virtues of liberalism and his abhorrent anti-Semitic outbursts, Scheuerman's assertion that he and his kind "helped send people to concentration camps" (73, 79n.) is as farfetched as claiming that Aristotle, who characterized barbarians as "human beings of a lesser breed," favored the extermination of people beyond the pale of Greek civilization. Distorting Schmitt, Schmitt scholarship, and the purpose of a book review is apparently not enough for Scheuerman. So he conjures up deeds that cannot be documented: "Hitler at one point even congratulated Schmitt for a particular

28. In *The Concept of the Political* Schmitt understood the adversary to be an enemy and not a foe. For a conceptual distinction between the two see my "Enemy or Foe: A Conflict of Modern Politics," in *Telos* 72 (Summer 1987), pp. 194-201. Cf. also G. L. Ulmen, "Return of the Foe," *ibid.*, pp. 187-193, and Paul Edward Gottfried, *Carl Schmitt: Politics and Theory* (New York and London: Greenwood Press, 1990), pp. 96-98. On the strongly defensive nature of Schmitt's criterion of the political, see Heinrich Meier, *Carl Schmitt, Leo Strauss*, *op. cit.*, pp. 26-27.

29. Carl Schmitt, *The Concept of the Political*, *op. cit.*, p. 33.

30. Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. by Ellen Kennedy (Cambridge and London: MIT Press, 1985), p. 9.

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contribution that proved helpful in rationalizing Nazi foreign policy" (76). One can only assume that he is referring to the *Grossraum* concept Schmitt developed in a paper he delivered on April 1, 1939. There Schmitt pointed out that new political realities in Europe were outpacing developments in international law. The emergence of a German *Grossraum* politics had come about as a result of Nazi Germany's concern with and protection of the rights of ethnic German minorities in Central and Eastern Europe. That, in turn, thrust to the forefront the Reich's relations with neighboring states. Because of Nazi Germany's recent assertion of power and its change in foreign policy direction, Schmitt, citing the Monroe Doctrine as a precedent, argued for the need to subject the German politics of *Grossraum* to scholarly investigation and to international law.[31]

Though Hitler made reference to Schmitt's concept before the Reichstag on April 28, 1939, when he stated that Germans supported a doctrine similar to the Monroe Doctrine "for Europe — and above all for the territory and the interests of the Greater German Reich,"[32] he did not identify the source of this notion and there is no evidence that he knew who Schmitt was. In addition to the well-known contempt that Hitler harbored for jurists, evidence confirms Bendersky's findings that after Hitler's Reichstag speech Hans Frank warned Schmitt to remain silent about the origins of the concept because the "Führer prided himself on his originality."[33] As Schmitt told me, when he heard Hitler refer to *Grossraum* over the radio he thought the Führer had finally understood something, but that his enthusiasm was soon dampened by Frank..

In 1986 I voiced some optimism about Schmitt scholarship.[34] Based on the

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31. Carl Schmitt, *Völkerrechtliche Grossraumordnung, mit Interventionsverbot für raumfremde Mächte — Ein Beitrag zum Reichsbegriff im Völkerrecht* (Berlin/Vienna: Deutscher Rechtsverlag, 1939), pp. 64-65. See also Joseph H. Kaiser, "Europaisches Grossraumdenken: Die Steigerung geschichtlicher Grossen als Rechtsproblem," *Epirrhosis: Festgabe für Carl Schmitt* (Berlin: Duncker & Humblot,1968), Vol. II, pp. 537-546.

32. *The Speeches of Adolph Hitler, April 1922-August 1939*, ed. by Norman H. Baynes (New York: Howard Fertig, 1969), Vol. II, p.1646.

33. Bendersky, *op. cit.*, pp. 258-259.

34. George Schwab, "Progress of Schmitt Studies in the English-Speaking World," in Helmut Quaritsch ed., *Complexio Oppositorum: Über Carl Schmitt* (Berlin: Duncker & Humblot, 1988), pp 447-459, 461-464. Differing interpretations notwithstanding, works that have recently appeared by English-speaking writers on Schmitt and that need serious consideration include John H. Herz, "Looking at Carl Schmitt from the Vantage Point of the 1990s," in *Interpretations*, Vol. 19 (Spring 1992), no. 3, pp. 307-314; G.L. Ulmen, *Politischer Mehrwert: Eine Studie über Max Weber und Carl Schmitt* (Weinheim: Acta humanoria, 1991); Chantal Mouffe, "Pluralism and Modern Democracy: Around Carl Schmitt," in *New Formations*, No. 14 (Summer 1991), pp. 1-16; Paul Edward Gottfried, "Confronting *The Challange of the Exception*: George Schwab as an Interpreter of Carl Schmitt," in *The Political Science Reviewer*, Vol. XX (Spring 1991), pp. 264-285; despite Richard Dien Winfield's unawareness of the conceptual distinction between "exception" and "emergency" and "enemy" and "foe," his "Rethinking Politics: Carl Schmitt vs. Hegel" in *The Owl of Minerva*, Vol. 22 (Spring 1991), No. 2, pp. 209-225, deserves attention; Gottfried, *Carl Schmitt*, *op. cit.*; Giovanni Sartori, "The Essence of the Political in Carl Schmitt," in *Journal of Theoretical Politics*, Vol. I, no. 1, (January 1989), pp. 63-75.

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evidence, I concluded that a turning point had been reached, i.e., a sufficiently deideologized atmosphere had begun to prevail, which had finally made it possible to study and judge Schmitt's writings according to their intellectual merit — a conclusion not unlike Rüthers'.[35] Because Bendersky's work and my own deal with Schmitt's *œuvre* on a scholarly level, how do crude Schmittians fit such scholars into Scheuerman's category of young Schmittians? The answer is provided by another crude Schmittian, Dieter Haselbach. Among other things, he labeled Bendersky and I American neoconservatives who have made Schmitt available for the neoconservative political agenda as well as for the Reagan revolution. Although not in the habit of defending his political beliefs, Bendersky exposed Haselbach's ignorance by pointing out that he personally had actually worked in the "McGovern and Carter presidential campaigns" and that he remains "categorically opposed to (actually appalled by) the conservative ideological milieu, socio-economic agenda, and foreign policy of the Reagan era."[36] According to Bendersky, I belong to "the Hans Morgenthau school of political realism in international relations . . ." and have "promoted the concept of the 'open-society' in which 'pluralism' is accentuated as an essential value and integral characteristic."[37]

The work of the crude Schmittians is just about the shoddiest found in academe. It reminds one of Vilmos Holczhauser's observation: "The Schmitt literature is an experimental setting for methodological questions. It is (probably) the only arena of research in which the principle anything goes is valid almost without qualification."[38]

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35. Rüthers, *op. cit.*, p. 131.

36. "Carl Schmitt as Occasio," in *Telos* 78 (Winter 1988-1989), p. 205.

37. *Ibid.*, p. 204. It appears that a contributor to *The New York Review of Books* is endeavoring to legitimize himself as a crude Schmittian. For example, in a long review of Michael Crichton's political thriller titled *Rising Sun* (April 23, 1992) which deals with the Japanese threat to the US, Ian Buruma states that "the anti-Semitic jurist Carl Schmitt had a picture of Disraeli above his desk" and cites for his source the psychohistorian Nicolaus Sombart.

38. *Konsens und Konflikt*, *op. cit.*, p. 259. The ideologically charged accusations that governed so-called Schmitt studies in the 1940s, 1950s and even 1960s is echoed by Richard Wolin's "Carl Schmitt: The Conservative Revolutionary Habitus and the Aesthetics of Horror," in *Political Theory*, Vol. 20, No. 3 (August 1992). By endorsing among other dated views the belief that "Schmitt strove to destroy and transcend [bourgeois normalcy] in everything he thought and wrote during the 1920s" (p. 425), that he longed for a *Führerstaat* (p. 426), and that he glorified war (p. 441), Wolin legitimates himself as a crude Schmittian.

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The Heroic Pedestrian or the Pedestrian Hero? Walter Benjamin and the Flaneur

Graeme Gilloch

Among the concerns of Walter Benjamin's giant mosaic of 19th century Parisian cultural life, the *Passagenarbeit*,[1] and his related studies of Baudelaire,[2] one of the most perplexing figures is the flaneur.[3] Although the lone individual wandering within urban labyrinths appears in Benjamin's other city sketches,[4] he thought that "Paris created the flaneur as a type" (M1, 4 PW p. 525).[5] He is the stroller -- the pedestrian who finds delight in ambling contentedly and unhurriedly through the city. He is at home in the metropolitan environment. As

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1. Benjamin's *Passagenarbeit* is the agglomeration of notes, and quotations regarding the Parisian arcades of the last century that he assembled from 1927 until his death in 1940. Initially intended as an essay to be written in conjunction with his friend Franz Hessel, these literary fragments gradually extended to cover a whole range of themes. Unfinished, and probably unfinishable, this mass of heterogeneous materials was finally gathered and published under the title *Das Passagen-Werk* by Rolf Tiedemann and Hermann Schweppenhaeuser in 1982.

2. See "The Paris of the Second Empire in Baudelaire" and its revised version "On Some Motifs in Baudelairs," *Konvoluts* "J" and "M" of the *Passagenarbeit*, and "Central Park," in *New German Critique*, 34 (Winter 1985), pp. 28-58 (henceforth: CP).

3. "The Flaneur" was the title of the second of the three sections of "The Paris of the Second Empire in Baudelaire."

4. Cf. the *Denkbilder* of "Naples," "Moscow" and "Marseilles," and his reflections on his native city of Berlin (the "Berlin Chronicle" and the "Berlin Childhood Around 1900").

5. Where possible, references are to existing English translations, though sometimes they have been modified. The following abbreviations have been used:

OSMB "On Some Motifs in Baudelaire."

PCNC "Paris Capital of the Nineteenth Century."

PSEB "Paris of the Second Empire in Baudelaire."

All in *Charles Baudelaire: a Lyric Poet in the Era of High Capitalism*, Trans. by Harry Zohn (London: Verso Editions, 1983).

PW *Das Passagen-Werk*, Vol. V of the *Gesammelte Schriften*, ed. by Rolf Tiedemann and Hermann Schweppenhaeuser, with the collaboration of Theodor Adorno and Gershom Scholem (Frankfurt a/M: Suhrkamp Verlag, 1972).

Susan Buck-Morss, *The Dialectics of Seeing: Walter Benjamin and the Arcades Project* (Cambridge, MA: MIT Press, 1989).

David Frisby, *Fragments of Modernity: Theories of Modernity in the Work of Simmel, Kracauer and Benjamin* (Cambridge, MA: MIT Press, 1988).

Jonathan Mayne, ed. and trans., *Charles Baudelaire: The Painter of Modern Life and Other Essays* (New York and London: De Capo Press, 1986).

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the flaneur turns the boulevard into an interior setting, so the internalized street, the arcade, is his favorite haunt.[6] According to Benjamin, "strolling could hardly have assumed the importance it did without the arcade" (PSEB p. 36). Whether in the arcade or out on the boulevard, for the flaneur the urban setting becomes a landscape in which he finds amusement, distraction and novelty. His highest ambition is to promenade without purpose: "an intoxication comes over those who wander through the streets for a long time without any particular goal. The activity of walking itself grows in value with each step taken" (M1,3 PW p. 525).

The flaneur is the aimless, complacent, haughty bourgeois who wanders through the urban complex in search of nothing more than diversion, to see and to be seen. As such, it is peculiar that it absorbs so much of Benjamin's attention, for in these studies he is always at pains to emphasize the importance of historical materialism and Marxism. Why does such a sauntering bourgeois snob feature so prominently in a set of studies concerned with the critical negation of bourgeois culture and society? The answer to this is to be found in Benjamin's understanding of Baudelaire's "heroism of modern life." For Benjamin, the notion of modern life as in any sense "heroic" is paradoxical. On one level, he unequivocally rejects it. On another, it becomes a source of valuable insights into modernity. Benjamin recasts the notion and extends its range. For him, there are three dimensions to the heroism of modern life: the attempt to shape the modern, the antagonism towards it and its phantasmagorical character or "irreality."[7]

One of the main themes of Benjamin's writings on the modern city and urban experience is the interpenetration of the old and new.[8] 19th century Paris, the "mirror city" as Benjamin calls it, saw itself as the reflection of the great urban centers of the ancient world, whether sinful Nineveh, decadent Babylon,

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6. Benjamin writes that "the street becomes a dwelling for the flaneur; he is as much at home among the façades of the houses as a citizen in his four walls. To him the shiny, enamelled signs of businesses are at least as good a wall ornament as an oil painting is to a bourgeois in his salon. The walls are the desk against which he presses his notebooks; news-stands are his libraries and the terraces of cafes are the balconies from which he looks down on his household after his work is done" (PSEB p. 37).

7. The notion of heroism also permeates Benjamin's descriptions of urban life. Thus in the *Passagenarbeit*, Benjamin describes going into the Parisian metro with reference to Orpheus' descent into Hades. In his discussion of Baudelaire, he writes: "what the man working for wages achieves in his daily work is no less than what in ancient times helped a gladiator win applause and fame" (PSEB p. 75). For Benjamin the endurance of the modern *is* in some sense heroic. He thereby treads a thin line between exposing the phantasmagoric and actually contributing to it. It is sometimes unclear where the heroic becomes mock-heroic, where the struggle against capitalism becomes derision of the pompous delusions of modern individuals. The attempt to disenchant the world through enchantment, to demythify modernity by drawing on mythology and antiquity is a tortuous undertaking which may take on the dubious characteristics of modern heroism: raging against modernity while unwittingly and unavoidably reasserting it.

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or sad Carthage. Above all, Paris dreamed of itself as the great new Imperial capital of the cosmos, as a modern Rome. Just as a self-conscious and pompous classical style dominated architecture, design and sculpture, so it also held sway over Parisian self-perception. In the metropolitan labyrinth, Benjamin notes that the dream of the ancients had been realized, but what of Theseus and Ariadne? The bold Parisian did not have to look far for the new hero of modernity, only into a mirror. To escape the ennui of modern urban existence, the *tedium vitae* produced by the nothing-new of fashion and the faceless uniformity of the metropolitan crowd, the city was transformed by Poe, Dumas and Sue into the site of adventure.[9] The city was presented as a locus of unspoken dangers and of evil lurking in every dimly lit alleyway. The detective story owes its origin to such a vision of the new metropolitan environment. This metamorphosis of the urban center, the home of the mundane, into the site of the extraordinary involved another: sober bourgeois citizens became heroic figures who risk the hazards of the metropolis single-handed. Urban heroes defy modern fate. They do not succumb to the temptations of the common-place commodity, resist the urge to hurry while retaining a sense of personal identity in the midst of the bustling crowd. Modern heroes are at odds with their epoch, yet addicted to the intoxication of modernity.

Like Baudelaire, Benjamin rejects the conceit of the bourgeoisie's simple self-equation with the heroes of the ancient world. For him, the bitingly satirical images of the lithographer Daumier "provided the critical distance necessary to recognise the pretensions of the bourgeois cloak of antiquity" (Buck-Morss 1989 p. 147). The romantic, melodramatic version of the city-as-wilderness with its steadfast heroic bourgeois citizens unflinchingly defying metropolitan monstrosities is revealed as nothing other than the self-aggrandizement of the petty trivialities of bourgeois daily life. Benjamin cites Edmond Jaloux's pompous and absurd lamentations on the perils of crossing the street.[10] The heroism of

8. This relation between the ancient and the modern is vital to Benjamin's theory of dialectical images. Old and new act as sources of mutual illumination. In his letter of April 16th 1938 to Max Horkheimer, Benjamin gives a detailed breakdown of his projected study of Baudelaire. He writes: "the work should have three parts. Their projected titles are: Idea and Image; Antiquity and the Modern; The New and the Always-the-Same." Of the relation between the first and second sections he notes that it is within the allegorical perspective that "the antique becomes visible in the modern, and the modern in the antique" (Briefe p. 751). Here the so-called heroism of modern life may be understood as a manifestation of the archaic within the modern.

9. Benjamin points out the influence of J. Fenimore Cooper's tales of the American wilderness. Alexandre Dumas wrote the *Le Mohicans de Paris* (1859), while "the very beginning of [Sue's] *Mysteres de Paris* refers to Cooper in promising that the book's heroes from the Parisian underworld are no less removed from civilization than the savages so splendidly depicted by Cooper. But Balzac never tired of referring to Cooper as his model" (PSEB p. 42).

10. The hapless pedestrian: "is unable to [cross the street] without taking a thousand precautions, examining the horizon, asking advice from the prefect of police, mingling with a stupefied and jostling herd . . . If he attempts to recollect the fantastic thoughts that

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modernity turns out to be nothing other than part of its self-deception.

Notwithstanding its bombastic pretensions, for Baudelaire modern life does contain a "heroic" dimension. Although he rejected bourgeois neo-classicism, he saw that a new concept of the heroic was necessary for the new aesthetic of modernity: modern heroism consists in the attempt to give voice to the transience of contemporary life.[11] To give form to the fluidity of urban experience was the writer's highest goal. Such a duty involved not the foolish dressing in the borrowed robes of antiquity, but the redemption of the fleeting facets of modern social life so that in the future they might constitute the "antique." Baudelaire "experienced the ancient claim to immortality as his claim to being read one day as an ancient writer" (PSEB p. 81).[12]

For Baudelaire, the poet was the ultimate hero in his struggle to represent the modern. This act involves resistance. In order to shape the modern, one must combat it, bring it to a standstill.[13] Modern heroism then involves an act of *hubris*.[14] For Benjamin, the heroic figures of modernity are characters embodying the prevailing tendencies of their epoch, while seeking (pretending) to resist them. They contain the very contradictory forces that shaped their age. It is not that they are simply anachronistic, but that they are blind to their own participation within that social order they reject. "True" heroes of modernity do not merely shape their epoch nor simply endure it. They are also scornful of it. The hallmark of modern heroism is self-deception rather than rage. It is not only the urban poet that deserves this title, but also those he emulates: the flaneur, the dandy, the gambler, the worker, the rag-picker and the prostitute. These are more than just victims of modern society. For Benjamin, the heroes of modernity are those inevitably doomed to endure it, to suffer its consequences while at the same time seeking to subvert it. Trapped in repeated suffering or caught in unchanging boredom, the modern hero is a melancholic figure: a stoic.

The modern heroes' defiance, however, is always a hollow protest. The *hubris* is in the *claim* to heroic status. For Benjamin, the grandeur of this conceit lends 19th century Parisian life its heroic quality. It is the phantasmagoria of the modern and the 'irreality' of Paris that makes heroism possible. This heroism

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come to him and which must excite in him the images of the street, he is deafened by the klaxons, dumbstruck by the loud gossipers" (M9a, 3 PW p. 547).

11. Benjamin notes that "in the epoch in which he belonged, nothing came closer to the 'task' of the ancient hero, to the 'labors' of a Hercules than the task imposed upon him as his very own; to give shape to modernity" (PSEB p. 81).

12. According to Benjamin, "in Baudelaire, the modern is nothing other than the 'newest antiquity' " (J59a, 4 PW p. 423).

13. One of Baudelaire's most important images of the poet is that of the fencer duelling with the forces of modernity. Benjamin points out that "to interrupt the course of the world — that was Baudelaire's deepest wish" (J50, 2 PW p. 401).

14. Benjamin cites one of Baudalaie's letters to his mother, dated December 23rd 1865: "I would like to set the entire human race against me. I see in this a pleasure that would console me for everything" (J46a,10 PW p. 395).

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is that attempt, doomed to failure, to escape the ultimate terror of contemporary existence, i.e., boredom. The modern individual's heroism lies in the quest for novelty and excitement in a metropolitan environment that denies them. It is the great gesture in defiance of the obvious fact that there is no heroism in modernity. The heroism of modern life is doubly mythic: it draws on ancient myth, and it does not actually exist. It is only one more facet of what Benjamin regards as the phantasmagoria of the contemporary metropolis. This response to the absence of heroism is paradoxically heroic. Modern heroism can only be a playing with heroism: "the hero, who stands fast on the scene of modernity, is in fact above all an actor" (J72a, 3 PW p. 461). Similarly, "The poet is the stand-in for the ancient hero" (PSEB p. 80). Benjamin writes of Baudelaire thus: "flaneur, apache, dandy, and rag-picker were so many roles to him. For the modern hero is no hero; he merely acts heroically. Heroic modernism turns out to be a *Trauerspiel* in which the hero's part is vacant" (PSEB p. 97).[15] Yet for Benjamin, these incarnations of the poet become figures of heroism in their own right. It is not just that the flaneur is the heroic poet's main role. The flaneur becomes heroic in his own right for he too is an actor, a player upon the stage of the modern city. The flaneur's heroism consists in his foppish performances as idler and dandy — performances in which mundane social life becomes an exuberant drama. For the flaneur, however, it is a theatrical presentation before a mirror, to an audience of one. Even the crowd with its mirror-like eyes, pays scant attention to the heroic performer. Playing the part of the hero for self-amusement alone soon becomes tedious. The attempt to avoid boredom becomes the surest route to it.[16] Modernity is nothing other than a *Trauerspiel*: the enactment of sorrow.

The flaneur endured the modern, mocked it and fashioned it while deceiving both it and himself.[17] Yet it is essential for him to be in the center of the metropolis, at the very heart of the crowd.[18] This urban crowd is the medium through which he moves. In no way, however, must he be equated with the "man of the crowd," Poe's enigmatic, perpetual seeker of the multitudes. Such a characterization is Baudelaire's fundamental mistake. For him, the flaneur is only one guise adopted by the poet: the incarnation of the "painter

15. Whereas the ancient hero is a character of tragedy, the modern hero is a mournful, melancholic figure of *Trauerspiel*. It is not some great deed but rather the endurance of sorrowful futility that distinguishes the modern hero.

16. Frisby points out that for Benjamin: "even the forms of heroism in modern life were to be exposed as forms of modern melancholy and boredom" (Frisby 1988 p. 263). 17. Benjamin quotes the following passage from Baudelaire: "lost in this cruel world, jostled by the crowd, I am like a man who, looking into the depths of the years sees only disillusionment and bitterness, and in front of him, only a storm containing neither joy nor novelty" (J47a, 2 PW p. 396).

18. Frisby notes that "it is the flaneur who passes through the labyrinthine world of the arcade, who seeks a way through the labyrinth of the city and through its 'newest labyrinth,' the masses" (Frisby 1988 p. 228).

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of modern life," the spectator of contemporary manners and urban scenes.[19] For Baudelaire, the flaneur becomes "one flesh" with the crowd. For Benjamin, however, "it is hard to accept this view. The man of the crowd is no flaneur" (OSMB p. 128). The reason for this rejection is clear. Benjamin contends that the flaneur's distinctive heroism consists of his refusal to become part of the crowd. The flaneur is not merely a pedestrian, he is the *heroic* pedestrian. On the Parisian boulevards, Benjamin observes, "there was the pedestrian who wedged himself into the crowd but also the flaneur who demanded elbow room and was unwilling to forego the life of a gentleman of leisure." The flaneur retains his individuality while those all around him are losing theirs.[20] He heroically resists incorporation into the milieu in which he moves. Indeed, the flaneur's disappearance into the crowd, the instant in which they become "one flesh," means the flaneur's extinction.

For Benjamin, the flaneur is heroic in his arrogant retention of aloof independence. Its most spectacular incarnation is that of the dandy. Dressed in the latest, finest and most dazzling garments available (and socially permitted) the dandy was the self-styled walking peacock who trod precariously on the limits of bourgeois good taste and sobriety.[21] For the flaneur-as-dandy, the city was a stage for the phantasmagorical presentation of an outlandishly costumed self.

Baudelaire observes that dandyism involved "the joy of astonishing others, and the proud satisfaction of never oneself being astonished" (Baudelaire, Mayne ed. 1986 p. 28). The dandy's blasé attitude did not extend to clothing and appearance. Indifference here gave way to a self-styled expertise, for the

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19. Baudelaire writes that: "the crowd is his element, as the air is that of birds and water of fishes. His passion and profession are to become one flesh with the crowd. For the perfect flaneur, for the passionate spectator, it is an immense joy to set up house in the middle of the multitude, amid the ebb and flow of movement, in the midst of the fugitive and the infinite" (Baudelaire, Mayne ed. 1986 p. 9).

20. Although Frisby states that to 'lose oneself' is "intimately bound up with the art of the flaneur" (Frisby 1988 p. 229), this is deceptive. To surrender oneself to the intoxication of the crowd is one thing, to lose one's sense of self is another. The flaneur derives pleasure from his location within the crowd, but simultaneously regards it with contempt, as nothing other than a brutal and ignoble mass. According to Benjamin, "the crowd is a veil, which constitutes a mass for the flaneur" (J59, 2 PW p. 421). The flaneur: "becomes their accomplice even as he dissociates himself from them. He becomes deeply involved with them, only to relegate them to oblivion with a single glance of contempt" (OSMB p. 128). It is this persistent aloofness that is the hallmark of the flaneur's heroism. Benjamin writes, paradoxically drawing on Baudelaire: "individuality as such receives a heroic contour as the mass comes to dominate the scene. That is the origin of the concept of the heroic in Baudelaire" (J81a,1 PW p. 468).

21. Benjamin quotes Louis Thomas: "the dandy, said Baudelaire, must aspire to be sublime without interruption. He must live and sleep in front of a mirror" (J10, 8 PW p. 319). Paris, the city of mirrors, was the great home of the 19th century dandy. Benjamin (citing one S.F. Lahrs in an 1847 work by August Lewald) notes: "egotistical — 'that is what one becomes in Paris, where one can hardly take a step without noticing one's beloved self. Mirror in mirror' " (R1a, 4 PW p. 668). In the mirror-like eyes of the metropolitan crowd one could endlessly admire oneself and feel oneself admired.

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dandy considered himself to be knowledgeable in matters of fashion and taste. He thought of himself as the (last) expert consumer (see J79, 3 PW p. 464). The greatest desire of the dandy-as-flaneur was to *stand out* in the crowd. His greatest fear was to become invisible. For Benjamin, the dandy is the social type that sought to resist the grey uniformity of the urban crowd through the acquisition of the most fashionable. In this antagonism to the anonymity of modern mass society "dandyism borders on the spiritual and the stoical" (Baudelaire, Mayne ed. 1986 p. 28). The dandy was the ultimate embodiment of Simmel's notion of fashion as social distinction and heroically failed to perceive that fashion itself was the great nothing-new, the thinly disguised always-the-same of commodity production and fetishization, the very source of the uniformity he so despised. For Baudelaire, "dandyism is the last spark of heroism amid decadence" (D5,1 PW p. 167). Its passing is a source of melancholy.[22] The last great customer, the dandy was soon to be supplanted unceremoniously by the mass consumer.

As a dandy, the flaneur might distinguish himself from the crowd by his appearance. Alternatively, he might choose to do so through his activity or through his lack of activity, for the business of the flaneur was "'doing nothing." He sought to convey the (ingenuous) impression of the man of leisure. It was in a calm, unhurried, and (hence) dignified manner, that the flaneur paraded through the city streets. He was pedestrian in both senses of the word: on foot, and slow. Benjamin comments: "his leisurely appearance as a personality is his protest against the division of labor. It is also his protest against their industry. Around 1840 it was briefly fashionable to take turtles for a walk in the arcade" (PESB p. 54). The dandy's extravagant performance and the dawdling flaneur's conspicuous idling converge in this peculiar image. The dandy resists uniformity of dress, the idler uniformity of motion. Both casually flaunt precious commodities: expensive clothing on the one hand, and time on the other. The flaneur ambles, saunters, and strolls but must not hurry. He is out of step with the rhythms of modern life.[23]

Ultimately, however, the flaneur as a modern hero is only a sham. He plays the part of the disinterested, unhurried aristocrat. This is a deception. Just as the flaneur-as-dandy is secretly complicitous with the ever-the same of fashion, so the indolence of the flaneur-as-idler is only a hollow protest. Despite the dawdling, the idler reaches his goal with time to spare.[24] He shaped the

22. Benjamin claims that for Baudelaire "dandyism is a setting sun; like a declining star, it is superb, without heat and full of melancholy" (J6a, 4 PW p. 312).

23. Benjamin sees the flaneur's "composure as nothing other than an unconscious protest against the tempo of the production process" (J60a, 6 PW p. 426). The idler has not been coerced into compliance with the dehumanising pace of machine-time in the industrial age. Sloth is heroic. Benjamin points out that "Marx speaks of the 'victory . . . of industry over heroic laziness" (M1a,1 PW p. 962).

24. Benjamin writes that "the labyrinth is the correct route for those who still always arrive at their destination early enough. For the flaneur this goal was the market" (J61, 8

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modern epoch, but not necessarily as a poet. The flaneur was the writer of the newspapers' *feuilleton* section, the sketcher of modern manners, the journalistic prototype of today's society columnist. He was the heroic gossip and the author of a particular literary genre which appeared in the 1840s: the physiologies. These were short articles describing the various characters found in the urban crowd. Supposedly humorous sketches, they presented crude and facile stereotypes for the readers' reassurance. They sought to relieve the anxiety produced by the vast anonymous urban crowd by depicting strangers as harmless and benign figures.[25] The crowd-as-safe-haven was part of a particular bourgeois fantasy: the comforting assumption not that you were just like everyone else, but that everyone else was really just like you. In the mirror-like eyes of the other, one saw only oneself. The physiology was part of the mythology of the crowd-as-consensus: "it was the most obvious thing to give people a friendly picture of one another. Thus the physiologies helped fashion the phantasmagoria of Parisian life in their own way" (PSEB pp. 38-39). The physiologies were the products of that self-appointed expert physiognomist, and self-styled great observer of urban life, the flaneur. Benjamin points out that "the physiologies were the first booty that the flaneur brought home from the market" (J82a,3 PW p. 470). Dawdling allowed the flaneur to sharpen his powers of observation, to go " 'botanizing' on the asphalt" (J82a, PW p. 470). Indeed, the display of idleness was a thin veneer, a flimsy façade designed to convince the purchaser of these literary trifles of the length of time "socially necessary" to produce them.[26] When "time is money," it may be beneficial to take a long time. The flaneur did not reject or resist the equation of time and money — the commodification of time — but recognized it and exploited it to the full. The idler could afford to take his time because his slowness was a calculated scheme for pecuniary gain. He transformed laziness into a paid occupation.

The flaneur-as-idler is thus doubly phantasmagoric: in what he writes (the physiologies) and what he does (the pretense of aristocratic idleness and the reality of bourgeois commercial interest). Indeed, for Benjamin the flaneur becomes the strolling embodiment of the commodity. As the finely dressed dandy, as the apparently nonchalant but actually ever-vigilant physiologist,

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PW p. 427). The flaneur goes to the market in the guise of a curious onlooker, but in reality is there to sell his goods: "as flaneurs, the intelligentsia came to the marketplace. As they thought, to observe it — but in reality it was to find a buyer" (PCNC pp. 170-71).

25. Benjamin notes that "in the origins of the physiognomies (correction, physiologies) was the wish, among others, to minimize and destroy this disquiet" (M16a,1 PW p. 560).

26. Benjamin writes that the flaneur "on the boulevards spent his hours of idleness, which he displayed before people as part of his working hours. He behaved as if he had learned from Marx that the value of a commodity is determined by the working time socially necessary to produce it. In view of the protracted periods of idleness which in the eyes of the public were necessary for the realization of his own labor-power, its value became almost fantastic" (PSEB p. 29).

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the flaneur "took the concept of consumption itself for a walk" (M17a,2 PW p. 562). This is why "the sandwichman is the last incarnation of the flaneur" (M19, 2 PW p. 565, see also M17a, 2 PW p. 562). The flaneur's eventual fate, the figure's truth, is to be found in the pathetic figure who wanders around the city, seemingly without a destination, but with a placard attached, advertising commodities for sale. The degenerate and thus quintessential flaneur is a walking commodity who, like the dandy, attracts the attention of passers-by, only now as pauper not peacock.

Whether as dandy or as idler, the city of Paris was not so much the home of the heroic bourgeois flaneur as his fantastic theater.[27] The flaneur carelessly snubbed the crowd, secretly pandered to its miserable literary tastes, and was finally overwhelmed by it. In the streets of the modern metropolis the flaneur finally loses himself. The hustle and bustle of the crowd was both necessary to the flaneur and the source of his eventual demise. It was essential as a backdrop to the life of leisure, as a contrast highlighting the dawdling tempo of the flaneur's gentle perambulations. Eventually though, the jostling crowd denied the flaneur the required elbow room and the self-styled aristocrat of the pavement was left to struggle inelegantly through the hated masses. The flaneur, like Baudelaire himself, eventually "battled the crowd — with the impotent rage of someone fighting the rain or the wind" (OSMB p. 154). Although the city forms the "sacred ground of the flanerie" (M2a, 1 PW p. 530), the urban complex gave birth to those forces that were soon to destroy the flaneur: the crowd, standardization and commodification. The flaneur sought not so much to resist these tendencies as to deceive them, and he failed splendidly. Thus the flaneur is only a mock-hero. The dandy is no more than a sheep in wolf's clothing. The idler desires nothing more than the avoidance of boredom. The dawdling flaneur becomes a measure of the ennui of modern life. In the dream capital of the 19th century "the flanerie is the rhythm of this slumber" (e°2 PW p. 1054). As the snobbish somnambulist, the flaneur is a true hero of modernity because he is no hero at all, only a player at heroism, an idle dreamer destined for a rude awakening.

27. Benjamin notes: "to the flaneur, his city — though he was born in it, like Baudelaire — is no home. It constitutes for him a stage" (J66a, 6 PW p. 437). It was to become an increasingly crowded and congested stage.

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Sacrifice: From Isaac to Patocka

Aviezer Tucker

In 1975, two years before his death, Patocka outlined three possible courses of action in an underground philosophy seminar: Plato's path — withdrawal from society into inner emigration; the sophists' path — compromise with society and survival; and Socrates' path — confrontation with society and, consequently, death.[1] This taxonomy can be extended beyond Greek philosophy. Voltaire's Candide reached Plato's inner emigration in his garden. Heidegger chose the sophists' path by first dedicating *Being and Time* to Edmund Husserl "in friendship and admiration," and then preventing him from using the Freiburg University library, and eventually surviving both the Nazis and post-war denazification. Most philosophers, however, seem to have chosen a path between Plato's inner emigration and Socrates' self-sacrifice: Galileo was ready to fight for his views but under pressure abandoned them. Few philosophers have ever chosen Socrates' path. What led 70-year-old Jan Patocka to struggle for human rights in Czechoslovakia and consequently die at the Socratic age of 70? When he wrote and signed *Charter 77* he knew how Communist Czechoslovakia treated dissidents. Yet he chose to risk personal well-being over tranquil retirement.

Patocka consistently argued that modern society is lost in inauthenticity. He was interested in transforming it into a more authentic and consequently more virtuous and just community. The obvious question was: how? His answer was to look for that element in contemporary society that, despite the rule of everydayness and alienation, shows unmistakable signs of human movement beyond the continuous self-loss in work and reproduction. His answer was *sacrifice*. While people were reduced to instruments of the accumulation, escalation and discharge of power during this century's wars, they perceived themselves as willingly *sacrificing* themselves. The experience of self-sacrifice seems to be something "higher" than work and reproduction: it is gaining something "higher" by losing something "lower." This experience constitutes a stepping out of technological metaphysics. Patocka hoped it would lead those who experience it to a new relation with truth.

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1. Gordon H. Skilling, *Charter 77 and Human Rights in Czechoslovakia* (London and Boston: Allan and Unwin, 1981) p. 22ff. Cf. also Zdanek Pink, "Courage in the Search for the Meaning of Life," in *Svedectvi*, Vol. XIV (1977), pp. 185-92.

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What is important for Patocka is not the ideology justifying self-sacrifice, but its absolute liberating effects.[2] His examples of experiences of self-sacrifice are those of soldiers in WWI trench warfare described by Teilhard de Chardin on the French side and Ernst Junger on the German. Patocka accepted that the front experience shattered all pre-war conventions, resulting in the destruction of war and the creation of an overwhelming sense of meaning. Frontline experience creates a solidarity with an enemy sharing similar conditions and the experience of self-sacrifice. This solidarity leads to the creation of a *community of the shattered*, of the sacrificed. According to Patocka, only such a community of the shattered can prevent another eruption of orgiastic war, the other facet of the boredom of animalistic everydayness.

Post-war economic reconstruction does not guarantee the prevention of a new war because the two world wars were the product of societies centered on work, production, reproduction — and the orgiastic eruptions of wars and revolutions. Only a community of shattered persons aware of the meaning of life through confrontation with death can prefer meaningful life at the apex to mere life for its own sake, manipulated and controlled by the fear of death. Such a community can prevent war by having the spiritual strength to say, like Socrates' *daimonion*, "no" to the powers that be. Patocka concludes with Heraclitus that *polemos* begets everything.[3]

Patocka's theory about boredom as the cause of war is ridiculous. In fact, as modern society lost its "transcendental" element it actually became less prone to war. The "suburbanization" of humanity blocked the possibility of meaningless wars in the second half of the 20th century, as shown by the US experience in Vietnam, the Soviet Union in Afghanistan, and Israel in Lebanon. Ordinary people are not willing to give their lives for false "transcendentality," for stopping the Red Menace in South-East Asia in the name of democracy, capitalist-imperialist forces in Afghanistan in the name of the international working class, or the Palestinians in Lebanon in the name of "ancient rights over Judea and Samaria." Here consumerism can be said to have done a great service to the human race.

Patocka's notion of sacrifice is influenced by Karl Jasper's limit situations and Martin Heidegger's *Dasein*'s confrontation with its finitude, as well as by Ernst Junger's and Teilhard De Chardin's thought. Yet, it is hard to accept that cannon-fodder waves of self-sacrificing Iranian children, wearing on their chests keys for the gates of heaven, have found authenticity. Nor is it plausible that Japanese kamikaze pilots saying "no" to the world of production and reproduction have discovered life in truth as they died. It is said that war brings

2. Jan Patocka, "The Dangers of Technicization in Science according to E. Husserl and the Essence of Technology as Danger according to M. Heidegger (Varna Lecture, 1973)" in Erazim Kohak, *Jan Patocka: Philosophy and Selected Writings* (Chicago & London: University of Chicago Press, 1989), pp. 327-339.

3. Jan Patocka, *Essais Heretiques sur la Philosophie de l'Histoire*, trans. by Erika Abrams, (Lagrasse: Editions Verdier, 1981).

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out the best and worst in people. Self-sacrifice in war certainly liberates one from the concerns of everyday life. But this liberation is not necessarily an improvement on mediocrity. Sometimes, and perhaps most of the time, it results in dehumanization. Most of those who experienced self-sacrifice in 20th century wars did not bring with them enough humanity to make the experience transformative. Actually they were left confused. Neither the American Vets from the Vietnam war or the Soviet Vets from the Afghan war gained much from losing the ordered life of production, consumption and reproduction because they had nothing to guide them out of the apocalypse. War brings out the sadists and the saints, but in ordinary people it causes mostly confusion. Yet, the experience of self-sacrifice can be meaningful if the people who undertake it are ready for it.

Just and Unjust Sacrifice

Western civilization seems to be based on a reversal of Freud's Oedipus complex. The narrative is not of sons attempting to kill their fathers, but of fathers sacrificing their sons. Consider the story of Isaac's sacrifice in *Genesis*, Ch. 22. On the surface, the point of the story is to demonstrate Abraham's obedience to God: Abraham is ordered by God to sacrifice the thing most dear to him, his only beloved son. He does so obediently and is eventually rewarded. On a moral level the Bible answers Socrates's question in *Euthyphro* by declaring God to be the source of all morality, rather than having God accept the principles of morality *because* they are right (it is morally forbidden to kill one's children only as long as God says so). But on a deeper level a very different drama unfolds between Abraham and his son. When Abraham is ordered to sacrifice Isaac he neither protests nor attempts to change God's mind (as, e.g. he tried in the case of the destruction of Sodom, or as Moses after the sin of the Golden Calf. He does not offer himself in Isaac's place and lies to his companions (and his son), telling them that he was going with his son to bow and *they* would return shortly. Abraham's lie is an explicit recognition of the immoral nature of the sacrifice. When Isaac, who carries the wood for the altar asks him where the sacrifice is, Abraham answers that God will show them when they reach the site. Then he ties his son to the altar, holds the knife in his hand and prepares to slaughter him, only to be stopped at the last moment by an angel.

From Isaac's viewpoint, his father, Abraham, decided to murder him premeditatively, then lied to him once, and concealed the truth a second time, while making him carry the wood for his own burning. At the last moment Abraham sublimates his urge and sacrifices a ram instead. Such an experience does not foster a relation of trust between father and son. The Bible does not indicate any response by Isaac to a shocking experience. But Isaac could have asked his father for the *meaning* of what had been planned. Confronted with such a question, Abraham would undoubtedly have invoked transcendence, justifying his deed by reference to a God that told him what to do. He,

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Abraham, "was just following divine commands." A transcendental justification of the sacrifice is demanded both by the victim as well as by the sacrificer. The sacrificer (Abraham in this case) also needs a justification for what he knows to be an evil act. The victim needs to find a meaning for the horror he endured.[4] The search for this meaning and the need to justify the sacrifice give rise to a transcendental ideology that attempts to excuse the injustice of the sacrificers and give meaning to the helplessness of the victim. In the story of Isaac's sacrifice this ideology is never questioned.

The New Testament does mention the reaction of another son to a sacrificing father. The authors present Jesus' sacrifice as that of God who "so loved the world, that he gave his only begotten Son. . . ." (John 3:16). (Claims that both father and son are part of the united trinity do not change the narrative since it was not the case that Jesus so loved the world, that he gave his only father. . .). Unlike Isaac, Jesus had something to say: "My God, My God, why hast thou forsaken me?" Some interpretations of this response claim that Jesus has become an atheist during the last moments of his life. This is unacceptable because had he been an atheist there would have been no point in addressing a non-being. Jesus recognizes that there is no way out, and he is to be sacrificed. But there is more to it than that. *Jesus morally condemns* his godly father, implying that his father should not have forsaken him, and asking him for a reason, for a moral justification of his inaction.

The New Testament justifies Jesus' sacrifice by invoking transcendence: God has sacrificed his only son so that "whoever believeth in him should not perish, but have everlasting life." Jesus, however, remains unconvinced. In his last moments he rejected the transcendental ideology that attempted to give meaning to his sacrifice. Jesus did not feel that his father should have sacrificed him. He could have said: "if my father really loves the world so much, why does he sacrifice me, rather than himself?"

This narrative of fathers sacrificing their sons in the name of transcendence reappears many times in real (non-mythical) history. It is particularly interesting to note the use of "transcendental" ideologies during 20th century wars to convince young men to sacrifice themselves for nation, race, religion and other supposedly transcendental entities. In this continuous story of paternal sacrifice of children, however, there is a shift in emphasis. Isaac has nothing to say; Jesus is able to make a feeble protest; in Christianity, though the three members of the trinity are supposed to be equal aspects of a unity, the emphasis is on Jesus

4. Heda Kovaly (the wife of Rudolf Margolis, Czechoslovakia's foreign trade minister who was tried and executed in the Slansky trials) recognized this need for a meaning of the sacrifice in her attempt to justify her joining the Communist Party, after surviving Aushwitz: "Martyrdom had been thrust on us: we had to give it justification. . . . The Communists were different, too, and that included the Jews who were Communists. They could feel that they suffered for an idea, for something they had chosen, not for what they were." Cf. Heda Kovaly and Erazim Kohak, *The Victors and the Vanquished* (New York: Horizon Press, 1973), pp. 60, 65.

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the victim. When it comes to the 20th century, Chardin, Junger, Jaspers and, following them, Patocka, are wholly on the side of the victim. Chardin and Junger realize that the transcendental ideology in the name of which they were sacrificed was false — a mere excuse for the sacrificers. Still, they did not go on to morally condemn the sacrificers and their transcendental ideology, as the veterans of Vietnam, Afghanistan, and Lebanon did. In fact, 20th century wars can be differentiated from those in which fathers sacrificed their lives so that their children will live in a better world, e.g., WWII, and wars where the children were asked to sacrifice their lives for the ideologies of their parents, e.g., Vietnam. The first kind of war tends to be just, the second, unjust.

This detour into the history of sacrifice narratives in Western civilization indicates that an unjust sacrifice assumes a distinction between the sacrificers and the victims; the sacrificers use false transcendentality to justify the sacrifice. A just sacrifice would be the opposite: a conscious and voluntary act, hence essentially self-sacrifice. This does not mean that the initiative for a just sacrifice cannot come from someone unable to sacrifice oneself, e.g. a leader such as Churchill, but the sacrificed have to accept the reasoning consciously. In a just sacrifice the victim identifies with the sacrificer and vice-versa.

Though these criteria are necessary, they are not sufficient since they leave open the possibility of conscious self-sacrifice for false transcendence, e.g. for the Führer and the fatherland. Obviously, there is a need for a teleological criterion stipulating what constitutes a just self-sacrifice. Jaspers, whose discussion of sacrifice influenced Patocka, regarded the preservation of authenticity or of human dignity the *telos* of a just sacrifice.[5] This is acceptable since it is another way of saying that a just sacrifice is made for life, it is a readiness to die to preserve what gives life its meaning. "Through this risk (of death that wants *life in the world*) there first arises genuine earnestness. Only he is grounded in life who is prepared to give up this life and who sacrifices it as he lets himself be constantly consumed by his task. Such sacrifice — unless it comes to an end in sacrificial death — acts constructively and fulfillingly. If, however, dying is involved, then this man — after having thought out and done what caution demanded and having considered the hierarchy of what is essential — becomes credible in his own eyes by being able to die in tranquility and to bear the shipwreck of his cause."[6]

Authenticity has to be further qualified to prevent claims that, e.g. it is authentically human to will for the power of one's group, hence it is justified to

5. "Whoever feels that his submission, his refusal to take the sacrifice upon himself, would have as its consequence his corruption as a soul in the world and his descent into absolute indignity, realizes at the same time that, together with his denial of sacrifice there would be a betrayal of something in the ground of things. Together with his surrender of his being-human just in order to stay alive he would achieve merely the nullity of nothingness in an illusion of life." Cf. Edith Ehrlich et al eds., *Karl Jaspers: Basic Philosophical Writings* (Athens, OH: Ohio University Press, 1976), p. 414, from Karl Jaspers, *Die Atombombe und die Zukunft des Menschen* (Munich: R. Piper Verlag, 1983).

6. *Ibid.*

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sacrifice oneself for it. Jaspers does not address this problem explicitly. Yet in his discussion of the death of Socrates and Jesus he does claim that their decision was just. He answers claims that Socrates brought his death upon himself by being defiant and offensive to the Athenians. "Those who take such a view, who hold that not the murderer but the victim was guilty, fail to see that his divine mission *to work for the truth* forbade Socrates to lose himself in servile acceptance of the prevailing untruth."[7] As for Jesus, he "is a summit of this power to suffer. To discern the essence of Jesus, we must know the essence of the Jews down through the centuries. But he did not suffer passively. He acted, in order that his suffering and death should be a goad to man. He bared his absolute to a world that accepts only contingency. . . . His reality is courage, above all in the fulfillment of his divine mission *to tell the truth, to be the truth*. That is the courage of the Jewish prophets. . . ."[8] In both cases Jaspers presents their deaths (their sacrifices) as an expression of an identical authentic essence, telling the truth for a world that actively refuses to listen. Jaspers discusses only the essences of these particular outstanding individuals, as distinct from the essence of man. But if, following Patocka, "life in truth" is seen as the essence of man and not just the essence of outstanding men, it follows that *a just sacrifice is a conscious self-sacrifice for truth and life aimed at its discovery*.

Patocka's Personal Self-Sacrifice

If self-sacrifice is undertaken for truth, it is a liberating experience — a return to one's true self, to authenticity and humanity. In *Charter 77* Patocka makes clear *in practice*, if not in theory, what could warrant sacrifice: bringing about conditions allowing the search for, and to live authentically in, truth; for a just society, which does not kill its Socrateses and Patockas.

Patocka, Havel, Hajek and their fellow signatories of *Charter 77* were ready to sacrifice themselves for these basic values. Patocka could have chosen Plato's path of internal exile. He could have continued to live in retirement, unharassed by authorities. He could have continued to give underground seminars at home and publish his works abroad or in *semizdat* editions. Yet, had he chosen not to risk self-sacrifice, he would have been less than himself, less than an authentic virtuous human being.

From the very beginning Patocka's sacrifice was a conscious act. He must have been aware of the magnitude of the risk he was taking by becoming the author and one of the three main spokesmen of *Charter 77*. He may not have foreseen his death following a police interrogation, but only imprisonment, harassment, physical and mental duress. As he indicated in the *Charter 77* manifesto, the moral responsibility to respect civil and human rights is universal and absolute. He saw himself following in Socrates' footsteps and sacrificed himself,

7. Karl Jaspers, *The Great Philosophers*, Hannah Arendt ed., trans. by Ralph Manheim (New York: Harcourt, Brace & World, 1962), p. 22.

8. *Ibid*, p. 90.

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knowingly, because he cared for his soul, for truth and justice. In this sense, Patocka's sacrifice is a just, conscious self-sacrifice for his right to argue and search freely for truth.

According to Havel's description of his last conversation with him, Patocka ended his life in a true Socratic fashion, which reads like a rewriting of the *Phaedo*: "We were spending the noon break between interrogations in the prisoners' waiting room at Ruzyne, philosophizing. At any moment, they could have come for any of us, but that did not bother the professor: in his impromptu seminar on the history of the idea of human immortality and on human responsibility, he weighed his words as carefully as if we had unlimited time before us. I not only asked him questions, I even submitted some of my own philosophical thoughts (something that would have been unthinkable earlier), and it seemed to me that the fact that I was not just a polite listener seemed to inspire him. Finally, he invited me to come and see him soon, because he would like to talk with me about it all more thoroughly. Earlier I would have taken it as flattering and would have postponed any visit out of shyness, but at that moment I felt such a strong desire to talk with him about the basic matters of existence that I would have perhaps liked to invite myself for that very evening — in that time of worries and confusion."[9] Patocka died March 13, 1977 in a Prague hospital, following a massive brain hemorrhage suffered under police interrogation. Nobody offered a cock to Asclepius.

Patocka's sacrifice was preceded by another "sacrifice." In 1968, following the Soviet invasion, an art student from Charles University, Jan Palach, burned himself to death in Prague's Wenceslas Square. Document No. 4/89 of the Charter, signed by the spokespersons Dana Nemcove, Sasa Vondra, and Tomas Hradilek has this to say: ". . . Jan Palach offered his death as a *sacrifice* to remind us of our pledge. He died because he wanted to call out as loudly as possible. He wanted us to realize what was happening to us. He wanted us to see what we were saying during that time when concessions and compromises were being made, seen by many as inevitable and sensible, a time of tactical decisions regarded by many as smart. People somehow did not realise that even under the greatest of pressures something must remain — certain basic values which cannot be betrayed if human life is not to lose its inalienable dignity. . . . This is why the anniversary is a timely reminder of Jan Palach's *absolute sacrifice*. Let us try to imagine that moment when he was gathering up in himself the courage for his deed when he reminded us in such a terrifying manner in close proximity to the bronze form of the patron saint of Bohemia, what we owe it to ourselves to do if we are not to perish as a human community. Let us find the courage to stare into the heart of that fire for a moment in order to remind ourselves that there exists something which must never be betrayed, neither yesterday, today nor tomorrow. . . . Jan Palach's

9. Vaclav Havel, "Last Conversation," in Skilling, *op. cit.*, p. 243. This is an excerpt from Havel's obituary of Patocka written in prison.

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sacrifice is not only a part of history. It is a living challenge to all those of us who are aware of our debt. . . ."[10] Here Palach's death is presented as a just sacrifice. His act has certainly been conscious, and self-inflicted. Yet, was burning himself a case of life in truth for Palach? What did he sacrifice himself for? If it was a matter of maintaining his own integrity, he could have become a dissident, suffering harassment and imprisonment that would have been far better than having to burn himself, and thus prevent any further life in truth as a dissident.

If Palach wanted to lead his compatriots to authenticity in defiance of the Soviet occupation, or to "raise the consciousness of the world," he had no way of knowing that he would achieve it through burning himself, and he could have done so in less self-destructive ways. Burning oneself has an immediate "shock effect," possibly greater than any other single act. Still, the practice of life in truth is a continuous process, a Platonic dialogue. In the cases of Socrates and Patocka, they sacrificed their lives for their right to live in truth, but their sacrifice was also a part of a process of life in truth. Patocka continued his dialogues with his students up to the last moment and, as Havel describes, during breaks between interrogations as well. Socrates continued his dialogues with his accusers and students during his trial and his last days in jail. In both cases,[11] death was the closing argument in a life-long dialogue. In the case of Palach, we can hardly speak of a dialogue. The precise message is unclear. Thus it is questionable whether his sacrifice was just.

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10. "Jan Palach's Sacrifice: A Living Challenge" (Charter 77, Document 4/89) in *East European Reporter*, Vol. 3, No. 4.

11. Socrates's decision to die rather than accept exile does not fit with this argument and it may well turn Socrates's sacrifice into a suicide. However, to decide whether Socrates' rejection of exile makes his sacrifice a suicide requires an analysis of his reasoning — a task beyond the scope of this discussion.

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Addiction, Culture and Community

Peter Ferentzy

Since the turn of the century substance abuse has been an extremely controversial issue. The loss of control entailed by addiction or inebriation is offensive to a liberal mindset and, despite the ideology of freedom, America was not only the home of alcohol prohibition but also leader of the global push to ban narcotics.[1] Universalist conceptions of what substance abuse entails and how this could be remedied have been dominant since the late 19th century, Yet the seemingly emancipatory agendas — punitive prohibition and large scale medicalization — have proven less effective than either traditional or local communities. Mass culture, be it in the form of education, threats, or mystification of the horrors of drug use, has been mostly detrimental. With the breakdown of cultural traditions and local autonomy, "organic" solutions and community-based preventative measures have become less efficient. "Experts" are therefore able to convince communities that expertise is essential. The resulting lack of confidence in community then becomes a self-fulfilling prophecy: as the problems increase, intervention is further legitimated.

Lately the issue has become more acute. Through the 1980s, "addiction" took on a broader range of application and a narrower interpretative framework. Concern with every obsessive compulsive disorder from workaholism to compulsive gambling has led to more and more treatment and to the medicalization of almost any conceivable personal problem along the lines of the disease/addiction model. Many repeat rapists are now diagnosed as "sexual addicts," i.e., victims of a disease.[2] Here the impulse to see everything in terms of liberal paradigms leads to a reduction of what are primarily social ills not only to individual psychology but to a completely modern polarization: individual free will vs. enslavement. Thus an old dilemma — that with community-based norms breaking down the individual becomes a locus of narcissistic hedonism rather than an autonomous, ethical agent — is approached with ideological purity

A child of the Enlightenment, the modern concept of "addiction" entails a complete loss of control. A liberal belief in absolute free will made an absolute lack of control easier to isolate. Though an inability to rule one's impulses

1. David F. Musto, *The American Disease: Origins of Narcotic Control* (New Haven: Yale University Press, 1973).
2. Patrick Carnes, *The Sexual Addiction* (New York: CompCare Publications, 1983).

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had always been inappropriate and punishable, contemporary addiction is a new idea.[3] In the past it had been assumed, e.g., that an habitual drunkard simply liked to drink. What may appear to have been a lack of sophistication was also a different approach to transgression: (1) man was not considered perfectible and so the objective had more to do with control than with cure; (2) people were thought capable of self-control and for the most part were unlikely to lose it completely. Today, however, addiction is seen as ironclad, inherited, a lifelong disease (even after twenty years of abstinence), and as an individual problem (socio-economic considerations are secondary). To this day, however, communities that do not share this view do a better job controlling substance abuse. For instance, a study of arrest rates in New York's Chinatown between 1933 and 1949 found that out of 17,515 arrests not one was due to disorderly behavior caused by drinking. The statistic is significant because Chinese do drink, sometimes to the point of intoxication, but have little tolerance for disorderly drunks.[4] With each passing decade such sanctions are less and less effective, and an emphasis on purely individual self-control undermines the communal networks that make self-control possible.

The cost of addiction treatment is soaring. Americans pay more per capita than any other nation for health care, which in terms of GNP percentage is the fastest growing expense. Of this, addiction treatment is the fastest growing segment.[5] There are many reasons why this is likely to be less acceptable as time goes on. Addiction is being mystified by the media and by treatment professionals. Ideas about addiction that have never been proven — such as the superiority of treatment or self-help groups to "natural" recovery and the alleged inability of addicts ever to return to moderate use — have become axiomatic.[6] In most of Europe, however, moderation oriented therapy for alcohol abuse is equally popular and considered equally effective.

While in the past each culture would have its own way of dealing with substance use and abuse, today communities are increasingly homogenized. A simple example of this is how WASP culture, which has had problems with alcohol consumption and hence avoids giving wine to children, has made it illegal for other cultures, such as the Italian and the Jewish, which traditionally have been able to curb alcohol abuse, from giving wine to their children, even though early controlled drinking is precisely how Italians and Jews learn to drink properly.

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3. H. G. Levine, "The Discovery of Addiction," in *Journal of Studies on Alcohol*, Vol. 39, No. 1, (1978).

4. Stanton Peele and Archie Brodsky, *The Truth About Addiction and Recovery* (New York: Simon & Schuster, 1991), pp. 52-53.

5. *Ibid.*, p. 367.

6. For an example of the prevailing disease conception of addiction, see Arnold Washton, *Cocaine Addiction* (New York: Norton, 1989). For empirical evidence to the contrary, see Martha Sanchez-Craig and Hau Lei, "Disadvantages to Imposing the Goal of Abstinence on Problem Drinkers: An Empirical Study," in *British Journal of Addiction*, No. 81 (1986), pp. 505-512.

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On this continent and elsewhere, community ties have always been the best means to prevent, and when necessary to overcome, substance abuse problems. The homogenization of addiction therapy is after all a function of the larger, consumer culture that will have less and less appeal as it becomes increasingly costly. People might again want the bonds that had given life meaning in the past.

As Stanton Peele has noted: "Between 1966 and 1975, Iowa had in place a low-cost alcohol treatment system steeped in completely natural community settings. Starting with Cedar Rapids, forty-three local communities formed citizens' groups, raised funds locally . . ."[7] People running these institutions were chosen not for professional expertise but for their empathy for alcoholics and common sense. Yet in 1975 vast federal treatment funds became available and local control was compromised in favor of central planning. What had once been communitarian institutions became typical hierarchies with universalized preconceptions concerning the causes of addiction and possible solutions. Despite the additional funding, the overall result was a lower success rate and a further erosion of respect for cultural specificity in substance use and abuse related matters.

Considerable research has been done on how some cultures control drinking and others do not. As Norman Zinberg has shown, empirical data on this issue reflect mainly what common sense would suggest. The extent to which these results are surprising to some and actually challenge the *status quo*, indicates how wrong-headed mainstream addiction theory and treatment have become. Though never completely denying the importance of social factors, only recently have mainstream thinkers begun to question a simplistic individualism that tried to view addiction primarily in terms of a drug's innate properties and individual psychology (or even biology); in short, researchers have "discovered" that cultures are likely to avoid alcohol abuse if: "1. Group drinking is clearly differentiated from drunkenness and is associated with ritualistic or religious celebrations. For example, the group may participate in the preparation of the alcoholic beverage to be consumed. 2. Drinking is associated with eating or ritualistic feasting, or the beverage is consumed with the food. 3. Both of the sexes, as well as different generations, are included in the drinking situation, whether they drink or not. 4. Drinking is divorced from the individual effort to escape personal anxiety or difficult (intolerable) social situations. Further, alcohol is not considered medicinally valuable. 5. Inappropriate behavior when drinking (violence, aggression, overt sexuality) is absolutely disapproved . . . This general acceptance of constant restraint usually indicates that drinking is only one of many activities and thus carries a low level of emotionalism, and also that drinking is not associated with 'rite of passage' or any sense of superiority on the part of one sex or the other."[8]

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7. Peele and Brodsky, *op. cit.* p. 370.
8. Norman Zinberg and Kathleen Frazer, "The Role of Social Setting in the Prevention

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The fifth point is perhaps the most important. If alcohol (or any other drug) is associated with addiction or psychosis, people are likely to live out these associations. Although addicts today are often punished for their misbehavior, they are also absolved with notions such as "He is not evil, but sick." This results in the worst of both approaches: excessive and often unnecessary punishment as well as little moral responsibility. Though substance abuse entails compulsion, the exaggeration of this fact leads people to believe that addicts are completely out of control. Yet everyone knows that smokers can stop for a few hours, or even during an entire pregnancy. It comes down to what one values and to what one has learned to consider possible. The futility of approaching substance abuse with a seemingly benevolent (and liberal) disease model is exemplified by drunken driving statistics: offenders who receive legal sanction are far less likely to repeat the offence than those who receive treatment.[9]

To date no treatment method — medical, psychoanalytic, AA or other — has been more successful than social bonds (which include social sanction) at getting abusers either to stop or to moderate.[10] Still, culture can also be the biggest problem. In societies where alcohol is considered evil, there is often a polarization of abstainers and excessive users. Peele quotes an Irish-American commenting on his own culture: "With the Irish, treatment is tried — and untrue. All his life the kid has been hearing of the evils of drink, and how his loving mother suffered at the hands of his loving father because of it. And, at the end of the threnody 'Ah, but it's in the blood, I guess.' [After the boy gets drunk] the wrath of God descends. The priest comes into the house. He makes it clear that what you have done is worse than the violation of a vestal virgin. The mother of the house sobs quietly, the old man, craven, orders another beer at the corner saloon . . . If a system has been devised to produce a confirmed alcoholic to exceed this one in efficiency, I know it not."[11]

The statement is telling in that it focuses on how anxiety surrounding a substance can lead to problems. Italians overall are more relaxed, and thereby more controlled, when they drink. Even the French, who have high rates of alcoholism, have less drink-related trouble than other cultures with similar alcoholism rates: while constant drinking is more or less acceptable, drunkenness is not, hence French alcohol addicts are more likely to develop a dependency where they drink all day but rarely get drunk.[12] They are nonetheless addicted, but the form the addiction takes is commensurate with social norms. What this shows is not that tradition and community will necessarily solve all problems, but that it is futile to approach addiction and substance abuse without considering cultural specificity.

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and Treatment of Alcoholism," in Jack Mendelson and Nancy Melo, eds., *The Diagnosis and Treatment of Alcoholism* (New York: McGraw-Hill, 1985).

9. Stanton Peele, *The Diseasing of America* (Lexington: Lexington Books, 1989), p. 57.
10. *Ibid.*, pp. 231-258.
11. *The Truth About Addiction and Recovery*, *op. cit.*, p. 52.
12. E. M. Jellinek, *The Disease Concept of Alcoholism* (New Haven: Hillhouse Press, 1960).

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Prohibition of alcohol, cocaine or any other drug may be appropriate for some communities and not for others. Alcohol prohibition, largely the result of an attempt to universalize a certain set of values in the early part of this century, successfully sent drinking cultures underground. People would often drink in gin dens rather than in familiar, more comfortable surroundings. For this reason, many "drinking men" drank less often. But when they did drink the activity was generally more compulsive and more likely to result in violence than before.[13] Catholic youths, drinking hard liquor instead of wine, no longer had to worry about what an aunt might think. From here one also can see the futility of trying to deal with substance abuse with reference to the *supply/demand* model. Again, this represents an attempt to deal with all such problems without letting each social setting work out its own networks. Americans in the 17th and 18th centuries drank two to three times as much as they do today. By the late 19th century consumption was already in decline and continued to decline right up to the enactment of prohibition.[14] Still, as industrialization and modernization broke up traditional social bonds, less drinking did not entail less drink-related trouble. Where people had consumed alcohol with family and friends, either at home, at local taverns or even at work, the saloon — where men would fight and gamble while the few women present were likely to be prostitutes — became more and more prominent. The traditional, colonial tavern excluded neither women nor children, and the tavern keeper was a respected member of his community. North Americans no longer have access to such a drinking culture. Still operating efficiently in much of Europe, this is the type of human interaction that best prevents substance abuse.

But alienation can have positive effects. For instance, black and white communities have different substance abuse patterns. For understandable reasons, there is more drug addiction per capita among blacks than whites. But when economic factors are equal, there is more drug/alcohol abuse among whites. There are many reasons for this. One is that, when economics conditions are not too crippling, black neighborhoods manage to develop stronger community bonds than white neighborhoods. Blacks are more distant from society at large and are poorly represented on television, in newspapers and on the radio. Understandably this leads to solidarity within the community. Such solidarity leads adolescents and young adults to spend time with and listen to their aunts and uncles. Conversely, an ideal-typical, lower middle class white neighborhood is more receptive to mainstream culture. The breakdown of community is more complete, resulting in more substance abuse.

Another example: few Jews are alcoholics. Alcohol consumption is family centered and ritualized. Some orthodox Jews, once a year, even get completely drunk for ceremonial reasons. Yet this community, which had always managed

13. Zimberg and Frazer, *op. cit.*

14. Joseph Gusfield, *The Symbolic Crusade: Status Politics in the American Temperance Movements* (Urbana: University of Illinois Press, 1953).

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to maintain sobriety, is now witnessing more alcohol abuse. There are two reasons for this: Jews are less isolated than before and hence are more likely to behave like anyone else. The prevalent disease model of addiction tells people that their problem drinking relatives are not prone to normal, consistent suggestion since addiction is a "disease" which requires either a complete breakdown of an individual or powerful and degrading confrontation with "significant others" preferably orchestrated by a professional. As mainstream culture sets in, traditional culture loses confidence. This further erodes the once effective bonds.

Some of the most interesting research done in this area has been on the growth of norms and control mechanisms in illicit drug cultures.[15] LSD, which led on occasion to psychosis in the 1960s, bacame less dangerous by the later 1970's as users became aware of rules such as "Drop only when you are in a good mood and only around people you like and trust." Explanatory constructs passed down by those with more experience made it possible for the initiates to interpret hallucinations with less anxiety. Many native Americans are able to use peyote without difficulty, yet cannot control liquor. This is because the former is ritualized and represents a positive affirmation of culture and religion. Conversely, the latter is associated with white domination. On the other hand, few whites have the skills necessary to consume peyote with the same kind of control.

Any search for communitarian solutions to substance abuse will have to take cultural diversity into account. Thus, few solutions — and few substances — should be labelled as innately good or bad. This would require a severe shift in attitudes. Given the failure of the drug "war" and other typically bureaucratic measures, such a radical transformation is at least conceivable.

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15. Norman Zinberg, *Drug, Set, and Setting: The Basis for Controlled Intoxicant Use* (New Haven: Yale University Press, 1984).

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Reply to Tymowski

Lawrence Goodwyn

Despite intermittent concessions to the "revisionist" books he reviewed[1] and his apparent self-identity as a "progressive" who urges us to be fair in our appraisal of ex-apparatchiks in Eastern Europe, Andrzej Tymowski remains hopelessly mired in encrusted categories of interpretation and vague terminology. This state of affairs obscures the difficult challenges faced by those attempting to elaborate democratic forms in modern societies. Furthermore, Tymowski repeatedly conflates "intellectuals" and the political activities of organized intellectuals, so that those who point to the occasional shortcomings of the latter are seen as engaged in "personal recriminations" reflecting "anti-intellectual" biases. Such an uncritical presumption ensures that all studies extending beyond monochromatic simplicity quickly outrun his range of understanding.

Readers who have learned from Tymowski that I "supported" Walesa's presidential campaign "because of its anti-intellectual character" will be dumbfounded to learn that my book, *Breaking the Barrier*, ends with the following summary: "The great challenge, one that many besides Lenin failed to meet, was to remain democratic while at the same time remaining insurgent. KOR set a new standard for the world in this respect. KOR's founders were ideologically diverse, an amalgam of socialists and liberals, Catholics, Jews and non-believers. The binding ideology was a simple and profound belief in human freedom . . . . To the ancient axiom 'all that is necessary for evil to triumph is for good men to do nothing' KOR's answer was to do something — to put the glare of the *Information Bulletin* on hidden police fabrications and star-chamber legal proceedings through which the government brutalized the population, to challenge the cynical hypocrisy of the judicial system with intelligent writs and forthright appeals made openly and legally, to mobilize Amnesty International, Helsinki Watch and PEN so that the weight of world opinion could be brought to bear on the ruthless pettiness through which large crimes were routinely committed by the state apparatus in Poland. Activists from KOR showed up at court trials where they were routinely harassed, threatened by police authorities and thugs, and sometimes beaten. Still, they kept returning. . . ."

1. Andrzej Tymowski, "Workers vs. Intellectuals in *Solidarność*," in *Telos* 90 (Winter 1991-92), pp. 157-75.

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Tymowski has done more than lose his poise; he explores the nether regions of insularity. The source of his dislocating anxiety lies in the interpretative premise of my study of *Solidarność*: that while courage and democratic intentions are essential prerequisites for the creation of large-scale democratic movements in police states, by themselves they are not sufficient. Would-be organizers must still find ways to cope with the awesome problems of how to recruit enough people to make the movement's ideas socially real. Since KOR has often been seen as central to this accomplishment, the hypothesis needed to be tested. Around the edges of Tymowski's review it may be discerned that I have done this ("painstakingly") and in ways effective enough ("it is not false") to move him to hint that the case for KOR's seminal organizing role lies mainly in the eye of the beholder. "Admittedly, chummy self-importance and an insular worldview are all-too-frequent traits among the Polish intelligentsia." Yet, given his worldview, 35 years of worker-organizing in Poland which led him to this conclusion and the eight years of my research which dug up the verifying evidence, are readily dismissed. KOR's non-causal role vanishes and is replaced by his response to this unwelcome news. The very recounting of the evidence by myself and Laba is seen as a breach of some unstated collegial canon.

Two distinct though related tasks confront historians dealing with the experience of *Solidarność*. The first concerns the research necessary for an understanding of the movement; the second, the relation of one's findings to the existing literature. Polish intellectuals and Poland watchers from other nations have generated a considerable literature concerning *Solidarność*. Grounded in KOR-connected sources, it emphasizes KOR's centrality while also acknowledging that the Polish Pope and Catholicism were helpful in the organizing effort. Suddenly, two books appear that test this hypothesis by exploring previously neglected sources. In a society with virtually no secondary literature on self-activity, this autonomous activity by the citizenry was regarded as culturally inappropriate in a Leninist state. Though such unsanctioned conduct occurred, written evidence of it existed only in police files. Consequently, no research and no debate about its meaning existed in the scholarly literature of People's Poland prior to the unexpected emergence of *Solidarność* in 1980. The KOR hypothesis, for which there was evidence, flowered in what was otherwise a vacuum. But Polish workers knew about their own struggle, even if they could not write about it; they also knew what they had learned about themselves and about the party and the state from their experiences. It guided their actions in the course of the remarkable organizing achievements that culminated in the creation of *Solidarność*. But where did one "look" — given the paucity of secondary literature? Oral investigatory techniques were the only ones which gave workers a chance to speak for themselves.

Tymowski undertakes to clear up the confusion generated by all this new evidence about workers. Conveniently, it is not necessary to engage in research to perform this task; rather, one formulates new categories of analysis and proceeds to reason from there. These require only a brief descriptive veneer,

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unsubstantiated by supporting evidence. Tymowski's first category is "certain issues of culture and old social structure." The latter is a 19th-century commodity, composed of "peasants, proletarians, and the intelligentsia," seen as entities uniquely distinct from their 20th century descendants because they were not "economically determined classes"(!). Tymowski takes just two sentences to explain this "structure" and its unappreciated endurance to the present. Two sub-categories appear, though apparently so effortlessly that they are not considered descriptive but, rather, revealed truth. The terms are "status" and "a system of mutual relations" as in: "This old social structure, defined by status and a system of mutual relations rather than economic position, survived in Poland well past its disappearance in other industrializing countries. Its persistence has to do with a long period of statelessness under the partitions during which language, national culture and religion were the features that identified Polish society and drove its claim to statehood." The first sentence presupposes that Tymowski has successfully separated "status" and "mutual relations" from economic determinants, for he does not find it necessary to provide any other support for such a remarkable interpretative flight. Does a land-owning peasant have a different "status" from a landless tenant and a correspondingly different "system of mutual relations" with the land-owning gentry, with other smallholders and tenants? To borrow Tymowski's terminology, do not these customs and arrangements, whatever they might have been, "have to do" with economic imperatives? No matter; Tymowski is hell-bent on specifying the "unity" of his "old social structure": "The culture associated with the old structure is communitarian and mutualist, not individualist or pluralist." One can only wonder what this sentence means in terms of social relations. Tymowski plunges on: "The relation of particular 'classes' to each other within the national community is perceived as organic (one part needs the other) rather than as a contention of discreet competing interests."

Tymowski characterizes this empty rhetoric as an "excursion into sociology." One longs for concrete examples. Here all social inheritances of authority and deference, variegated as they must have been and economically rooted as many of them were are simply obliterated by his "national community." By way of his "historical/sociological analysis" Tymowski reaches his predetermined destination — a pristine national "unity" essential to an understanding of the causal dynamics that created *Solidarność*. The punchline: "KOR's claim to 'raise consciousness' in society at large, and among workers in particular, had primarily to do with calling them to acknowledge the pre-existing consensus, the shared idea of national community."

There was a time, in the McCarthy era of the 1950s, when a number of sociologists and self-appointed intellectual historians wrote like this in the US. For them the US was a land of consensus, having transcended what was called "class conflict." The "end of ideology" was at hand, as Daniel Bell was at pains to emphasize, and if some social sectors continued to act as if they did not understand these realities, this merely documented the "irrational" qualities

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of such ingrates. In the hands of such creative writers as Richard Hofstadter, these excursions into social analysis seemed to carry weight to the extent they remained at the level of holistic speculation and disdained the need for concrete corroboration. . . . Then along came American society, in its grimy and inadequately deferential variety acting in surprising ways in Montgomery and Birmingham and Selma, and at draft boards and on college campuses, and it seemed as if the achievement of consensus might have been prematurely proclaimed. In due course came proliferating groups of social historians, with computers and tape recorders and new ways of thinking about old evidence, unearthing in the process a veritable cornucopia of social details — from every decade of the American experience, the British experience, the French, and so on. The depth of the scholarly recovery of social activity in any one country had more to do with the availability of systems of documentary preservation and archival retrieval than anything else. In any case, after more than thirty years of research and debate about the meaning of the research, no one any longer has confidence in or, indeed, much patience with, three-word characterizations such as "the national community."

Since it is now possible to do social research in Poland without police surveillance, the days of polysyllabic speculations-sans-evidence are clearly numbered. Tymowski rehearses the fading rhythms of an outmoded era in Polish scholarship. He ends up with self-constructed contradictions. He concedes that the case for the workers' movement on the Baltic coast "is not false" and acknowledges that regions near Warsaw where KOR's presumed influence was strongest failed to develop the consciousness that created *Solidarność* in the Lenin Shipyard. Indeed, as *Breaking the Barrier* makes clear, KOR was unable to generate this consciousness among Warsaw workers because such was not attained within KOR's own ranks.

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What is Integral Federalism?

Lutz Roemheld, *Integral Federalism: Model for Europe*, trans. by Hazel Bongert (Frankfurt a/M: Verlag Peter Lang, 1990), pp. 560.*

"The federalist revolution is one of the hidden revolutions of our time. . . . Thus the time has come to return to the original concepts of federalism and to break out of the mold which holds the term to refer strictly to modern federalism."[1] This modern federalism was an American invention, and today federalism has come to refer exclusively to this modern version. In order to link the federal principle with the modern state, the framers of the American Constitution had to perform what Daniel Elazar has called a "sleight-of-hand" by transforming the term "federal," meaning a confederation of political entities that retain their sovereignty within a permanent league, into a federal state whose over-arching government could be considered national and would have as much or more original authority as its constituent parts. "This was actually performed through *The Federalist*, which appropriates the term 'federal' to describe the latter conditions. . . . The real meaning of the American solution was to provide a way to circumvent the problem of exclusive state sovereignty — to provide a modern alternative for organizing the polity on an even more democratic basis than that of the Jacobin state. Americans made not the state but the people sovereign."[2]

The American federal system was the first modern polity to link federalism with popular government or democracy. Since then all modern federal systems have claimed to be democratic and have sought democratic legitimacy. While most other modern federal systems, such as the Swiss and the Canadian, have borrowed heavily from the American model, this federal solution was unable to circumvent the inherent problem of the antithesis between democracy and federalism noted by Carl Schmitt.[3] The sovereignty of the people, which presupposes democratic homogeneity, leads necessarily to a unitary and centralized state. The alternative to the sovereignty of the state or the sovereignty of

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* Vol. 7 of the series "Demokratie, Ökologie, Föderalismus: Schriftenreihe der Internationalen Gesellschaft für Politik, Friedens- und Umweltforschung," ed. by Lutz and Regine Roemheld.

1. Daniel J. Elazar, "The Role of Federalism in Political Integration," in *Federalism and Political Integration*, ed. by Daniel J. Elazar (Ramat Gan, Israel: Turtledove Publishing House, 1979), p. 28.
2. *Ibid.*, p. 18.
3. Cf. Carl Schmitt, "The Constitutional Theory of Federation," in this issue of *Telos*.

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the people is dual sovereignty: the sovereignty of the federation and of its members, which is the core principle of integral federalism.

Although confederal arrangements were the original form of federalism for Europeans, going back to the league of Greek cities in antiquity, confederations disappeared in the modern age because they could not mobilize sufficient political support against exclusive nationalisms. Not only did the Swiss transform the original Helvetian Confederation into a modern federal system along American lines, the German Confederation established on the ruins of the Holy Roman Empire evolved into the quasi-federal German Empire of the Second Reich. Today, despite the strong tendencies toward a "United States of Europe" developing along American lines, there is still the possibility that the European Community (EC) may undertake a revival of confederal arrangements. Despite the fact that the distinction between a confederation and a federal state is, in Schmitt's view, arbitrary because the essence of federation lies in dual sovereignty, today it serves a purpose since the really existing federal state — a *de facto* centralized unitary state — is the modern model. Given this situation, integral federalism may yet attain the political relevance it has sought since the 19th century. Lutz Roemheld's book is thus not only timely but instructive. First published in German in the mid-1970s,[4] it provides a comprehensive history and exposition of integral federalism. While the English translation leaves much to be desired,[5] it nevertheless allows an assessment of the problems and prospects not only of integral federalism but of other federalist movements that until now have remained politically marginal.

Integral federalism was originally developed by Pierre-Joseph Proudhon and subsequently elaborated by Alexandre Marc and his associates. Although better known as an anarchist than a federalist, Proudhon (1809-65) promoted federalism and predicted that "the 20th century will open the age of federation." Marc (1904-), a Russian-born French philosopher, has further developed Proudhon's vision. Like Elazar in the US, Marc in Europe is the main advocate of what has remained for the most part a movement for the propagation of federal ideas. He first came to prominence during the "federalist vogue" that engulfed Europe in the late 1940s and early 1950s. At that time the greatest obstacle to federalism was the rapid development of intergovernmental cooperation based on traditional international practices which did not involve supranational authorities.[6] Like other federalists, Marc believed that "without the security, the guarantee of a federal power, the gears of the economic machines will become jammed and the Common Market will fall apart." He was more correct in his prediction that the Common Market

4. Cf. Lutz Roemheld, *Integraler Föderalismus: Modell für Europa. Ein Weg zur personalen Gruppengesellschaft*, Two Vols. (Munich: Verlag Ernst Vögel, 1977).

5. Quotations from Roemheld's book in this review have by and large been altered.

6. Ilan Greilsammer, "Some Observations on European Federalism," in Elazar, ed., *Federalism and Political Integration*, *op. cit.*, pp. 109ff.

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would never become a "political community" by becoming a real "government of Europe." The Maastricht Treaty notwithstanding, there is no doubt that in the EC intergovernmentalism is still a stronger force than federalism and that nationalism, although largely discredited, is still a problem — especially in the former lands of the Soviet empire. For this and other reasons, the ideas of integral federalism advocated by the "Centre Internationale de Formation Européenne" (CIFE) and the journal *L'Europe en formation*, both founded by Marc, have remained marginal. Enlightenment ideology and liberalism have contributed to this situation. Whatever the weaknesses of integral federalism, and despite the lack of resources and internal divisions that have plagued this "school," the reasons for the lack of political engagement have been as much historical as substantive.

The "Father of Federalism"

Proudhon claimed to be the first theoretician and even the father of federalism. His major work on the subject, *The Principle of Federation*,[7] competes with *The Federalist* as the only other classic of its kind. The first French printing quickly sold out and subsequent printings and translations influenced such diverse groups as the Paris communards, the regionalist thinkers of the Third French Republic and the English theorists of political pluralism, most notably Harold Laski, who considered it one of the great books of the 19th century. Today, however, "it is largely forgotten, except among certain French *européens*, for whom it is a key text for the idea of international confederation."[8] In light of recent developments in Europe, however, it is instructive to recall the immediate situation that Proudhon addressed — plans for the unification of Italy and his opposition to them.

Having in 1858 published a book on justice,[9] which earned him a fine and a prison sentence, Proudhon chose exile in Belgium and increasingly turned his attention to international affairs. In 1861 he published a book on war and peace,[10] but soon concentrated on the European situation in general and Italy

7. Translated and introduced by Richard Vernon (Toronto, Buffalo and London: University of Toronto Press, 1979). Cf. Pierre-Joseph Proudhon, *Du Principe fédératif et de la Nécessité de reconstituer le Parti de la Révolution*, Introduction by Georges Scelle, Jules L. Puech and Théodore Ruyssen (Paris: Librairie Marcel Riviere, 1959). Cf. also, Pierre-Joseph Proudhon, *Über das Foderative Prinzip und die Notwendigkeit, die Partei der Revolution wieder anzubauen (Teil I)*, Translated by Lutz Roemheld, Vol. 6 of the series, *Demokratie, Ökologie, Foderalismus* (Frankfurt a/M., Bern, New York and Paris: Verlag Peter Lang, 1989).

8. Vernon, "Introduction" to *The Principle of Federation*, *op.cit.*, p. xi.

9. Pierre-Joseph Proudhon, *De la Justice dans la Révolution et dans l'Église, Nouveaux principes de philosophie pratique adressés à Son Éminence Monseigneur Matthieu, Cardinal-Archevêque de Besançon*, Second Edition, Introduction by Georges Guy-Grand, Essay by Gabriel Séailles, Notes by Charles Bouglé and Jules L. Puech (Paris: 1930-1935), 4 Vols.

10. Pierre-Joseph Proudhon, *La Guerre et la Paix : Recherches sur le Principe et la Constitution du Droit des Gens*, Introduction and Notes by Henri Moysset (Paris: Librarie Marcel Rivière, 1927).

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in particular. Fearing that the outcome of the Italian nationalist movement would be a centralized nation-state, he argued that Italy was such a diverse country, with strong local cultural traditions, that to unite its provinces, regions and cities under a single sovereign would be tantamount to the French emperor annexing the Low Countries. His federalist alternative to nationalism was presented first in a work on federation and unity in Italy[11] and then in *The Principle of Federation*. Since the last two parts of his book are devoted specifically to the Italian situation and to responses to critics of his earlier works, only the first part is considered of lasting significance and is usually the only part republished and/or translated. Given the present situation in Italy, however, the second and third parts of Proudhon's book may again become relevant. In any case, his book is of particular interest today because it examines and compares the existing federations of his time — the Helvetian (Swiss), the German and the American — from his own critical perspective. His critique of nationalism and state sovereignty gains currency at a time when it is becoming increasingly clear that the nation-state has outlived its usefulness, that new and more heterogeneous political forms are taking its place. Federalism appears to be the most viable alternative.

A recent study of Proudhon argues that there is no contradiction between the ideas of the young and the mature thinker because federalism is the logical outcome of the ideas of order and justice he promoted from the very beginning.[12] Allegedly, the key to all of Proudhon's work is found in his formulation of the basic problem of social organization: "to find a condition of social equality which is neither communism nor despotism, neither fragmentation nor anarchy, but freedom in order and independence in unity."[13] Around 1840 Proudhon rejected the capitalist market in favor of the mutual exchange of goods and services on the basis of the average labor time required for production.[14]

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11. Pierre-Joseph Proudhon, *La Fédération et l'Unité en Italie* (1862), *Nouvelles Observations sur l'Unité italienne* (1864, posthumously published in 1865), included in the same volume as *Du Principe fédératif* (see note 7).

12. Bernard Voyenne, *L Fédéralisme de P. J. Proudhon*, Preface by Alexandre Marc, Réalités du Présent, No. 9 (Paris: Presses d'Europe, 1973), p. 37. Cf. Bernard Voyenne, *Der Föderalismus Pierre-Joseph Proudhons*, trans. by Lutz Roemheld, Vol. 1 of the series, Demokratie, Ökologie, Föderalismus, *op. cit.*, (Frankfurt a/M, Bern, New York and Paris: Verlag Peter Lang, 1982), pp. 15ff. Cf. also Bernard Voyenne, *Histoire de l'Idée Européenne* [1952] (Paris: Petite Bibliothèque Payot, 1964).

13. Pierre-Joseph Proudhon, "De l'Unité de la Célébration du Dimanche," in *Oeuvres* (Paris: Librairie Marcel Rivière), p. 37, quoted in *Integral Federalism*, *op. cit.*, p. 27.

14. At this time Proudhon was one of Karl Marx' key political mentors. In 1845 Marx defended Proudhon against the attacks of Critical Criticism, even to the point of giving him credit for having written a "scientific manifesto of the French proletariat." Cf. Karl Marx and Frederick Engels, "The Holy Family, or Critique of Critical Criticism: Against Bruno Bauer and Company," in Karl Marx and Frederick Engels, *Collected Works*, Vol. 4 (Moscow: Progress Publishers, 1975), pp. 23-35, 38-53, etc. However, soon after he reached the conclusion that Proudhon's ideas were neither as scientific nor as revolutionary as they should be. In 1847 he characterized Proudhon's thinking

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He advocated a "principle of association" based on balanced contradictions to be resolved in descending order from the state to the individual workshop. With primary emphasis on the economy, his "theory of mutualism" presupposed an idea of "justice" concerned with the relation between the individual and society. He rejected the idea of individual "natural" rights because rights are "essentially social." Thus his federalism is always focused on communities.

While the economic emphasis of Proudhon's "mutualism" ultimately was

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as "The Metaphysics of Political Economy" largely because Proudhon refused to hypostatize the proletariat as the savior of humanity. In particular, Proudhon continued to ground his thinking on the consistency of human nature, whereas Marx insisted that "all history is nothing but a continuous transformation of human nature." Proudhon argued that competition and association are mutually beneficial, whereas Marx insisted that competition "always becomes the more destructive for bourgeois relations in proportion as it urges on a feverish creation of new productive forces, that is, of the material conditions of a new society. In this respect at least, the bad side of competition would have its good points." Cf. Karl Marx, *The Poverty of Philosophy* (New York: International Publishers, 1967), pp. 147-150. On the surface, the difference between Marx and Proudhon seems to be simply a matter of degree. But as Marx's socialism became more "scientific," his own critique of political economy became increasingly metaphysical. In 1848 Proudhon emerged as the leading socialist spokesman in France, if not the world, which caused Marx to intensiy his critique. Thus, along with David Ricardo, Proudhon became one of his two major theoretical antagonists in the notebooks Marx wrote in 1857/58 as the foundation of *Capital*. Cf. Karl Marx, *Grundrisse: Foundations of the Critique of Political Economy*, trans. with a "Foreword" by Martin Nicolaus (New York: Random House, 1973). Ultimately, of course, Marx became the leading socialist theoretician and Proudhon's subsequent influence as an anarchist was largely overshadowed by his Russian counterpart, Michael Bakunin. Eventually Bakunin's anarchism also succumbed to the logic of Marx' socialism.

Hitherto, Proudhon has been largely remembered in terms of Marx's critique. Today, however, the revolutionary potential of both Marx' and Bakunin's thinking has been spent if not discredited, while the revolutionary potential of Proudhon's federalist manifesto may at last be taken seriously. Marx's critique of Proudhon did not extend to his later work on federalism because this aspect of his thinking was of little or no consequence to Marx's critique of political economy. Already pigeonholed as an anarchist, the federalist Proudhon made no attempt to link anarchism or socialism and federalism, which explains why the relation between the younger and the older Proudhon has been the subject of dispute among his biographers. Marx chose the opponent most useful to the development of his own ideas, which was the younger Proudhon. Yet there is no clear break in Proudhon's thinking. Federalism is consistent with his interest in social justice and, different from state federalism, Proudhon's account is consistent with the notion of organized anarchism — despite the *prima facie* contradiction. Although Marx' socialism always envisioned the withering of the state, the dictatorship of the proletariat necessitated the kind of statist involution inherent in the Enlightenment logic of Marx' thinking. Proudhon's version of anarchy is "mutualism," defined in *The Principle of Federation* as a system in which horizontal social relations of exchange exclude the vertical political dimension of governmental control. Anarchy is thus autonomy whereby autonomous agents are able to handle their own affairs by mutual agreement. If he underrated the market, as Marx pointed out, he nevertheless promoted regionalism, community, cooperation, subsidiarity, personalism and most of the other features whose retrival is today seen as the goal of "integral federalism."

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replaced by the political emphasis in federalism, he insisted that political federation requires an economic principle of fairness. But in *The Principle of Federation* this economic presupposition is not as explicit as in other writings. "Federation . . . is an agreement by which one or more heads of family, one or more towns, one or more groups of towns or states, assume reciprocal and equal commitments to perform one or more specific tasks, the responsibility for which rests exclusively with the officers of the federation."[15] Here Proudhon separates the contractual basis of federation from Jean-Jacques Rousseau's "social contract." Characterizing the latter as a legal fiction to legitimate the state, Proudhon gave the term a new content: "In the federal system, the social contract is more than a fiction; it is a positive and effective compact, which has actually been proposed, discussed, voted upon, and adopted, and which can properly be amended at the contracting parties' will."[16] It is a mutual contract which includes the constant reformation of legal relations among individuals and groups on the basis of strict reciprocity on all levels and with respect to every possible point. What is crucial in the federal contract is that "in this system the contracting parties, whether heads of family, towns, cantons, provinces, or states, not only undertake bilateral and commutative obligations, but in making the pact reserve for themselves more rights, more liberty, more authority, more property than they abandon."[17] Such a social contract is not between individuals but between groups, since the abstract individual is not free but remains bound by economic restraints. Mutual exchange between economic partners also serves to preserve respect for autonomy, locality and self-government. As Voyenne emphasizes, the contractual principle functions on all levels — it is a "pyramid of free associations" culminating in the federal authority.

In the *Cité fédéraliste*[18] — Proudhon's hypothetical community — the federal order would rest on two contradictory principles: authority and liberty. "All political constitutions, all systems of government, including federations, fall within the scope of one formula, *the balancing of authority by liberty* and vice-versa."[19] Proudhon borrowed from both liberalism and socialism and in his notion of the federal community the idea of sovereignty combines monarchic and democratic elements. Once authority loses its mystique in the form of the state, it finds a new legitimacy in the ascending — rather than descending — level of sovereignty according to need and efficiency. Since the balance between authority and liberty is always tense and unstable, federalism is its best guarantee — a universal contract which alone is capable "of reconciling the autonomy of the contractual parties with the socialization of their powers." Nevertheless, while the constituent units of the federation are "sovereign" only in their

15. Proudhon, *The Principle of Federation*, *op. cit.*, p. 38.
16. *Ibid.*, p. 39n.
17. *Ibid.*, p. 39.
18. Cf. "La Cité Fédéraliste," in Voyenne, *Le Fédéralisme de P. J. Proudhon*, *op. cit.*, pp. 165-88.
19. Proudhon, *The Principle of Federation*, *op. cit.*, p. 7.

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defined jurisdiction, they maintain a greater share of authority than they relinquish to superordinate institutions by mutual obligation. Otherwise, says Proudhon, a process of increasing centralization would be set in motion which ultimately would divest the federal community of its substance.

Proudhon further distinguished between functional and territorial groups. Whereas the former represent the organizational units of the production and service sectors, the latter are the constitutive elements of the political landscape. In this regard he acknowledged that regions as well as communities are particularly suitable for optimizing the available means of social and economic development because they represent a link between the nation-states and the international community. The federal state comprises a graduated system of communal, provincial, cantonal and regional associations in which the individual territorial groups come together. The widest possible dispersion of jurisdictions on the subordinate level corresponds to the fan-shaped distribution of the federal community. The federation has no jurisdiction with respect to the administration of justice (with the exception of crimes and offenses against the federation itself), financial matters (with the exception of guaranteeing the authenticity and protection of the currency), education (which, like the Church, should be completely separate from the state) and defense (which is responsible to the local militia and comes under the command of the federation only in case of war).

Diplomacy, an Accounting Office and a Statistical Bureau remain on the federal level. Since the federation is the supplier of statistical data in the economic and social spheres and has authority to verify accounting records, it oversees and promotes economic and social progress. Given his inexorable opposition to French centralism, Proudhon envisaged the possibility of the withdrawal of a member-state from the federation if such was not explicitly excluded in the original treaty. However, if the result of such a withdrawal would endanger the existence of the federation and thus be unacceptable to the majority, then the federation would have the right to use force to prevent it. The vicious circle of interstate rivalry, expansionism and centralization could only be broken by the internal federalization of individual states, which presupposes an extensive dissolution of the concentration of power in the highest state institutions.

Proudhon approached the question of federalization primarily in terms of disaggregation, i.e., in terms of dissolving nation-states into smaller units rather than of uniting smaller units into a larger aggregation. Contrasting "federal Gaul" with "monarchical France," he detected in provincial life a residue of ancient nations. At times he wrote as though the local or regional communities which were to constitute federations were in some sense primordial or natural, i.e., pre-political entities whose distinct character required political defense and expression.[20] Whether or not such communities have existed from

20. Although unacknowledged, this notion of primordial European communities was further developed by Leopold Kohr in *The Breakdown of Nations* (London: Routledge & Kegan Paul, 1957).

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time immemorial or whether they are later inventions, the thrust of Proudhon's argument here was to provide a further substantive criterion for federalism — the political representation of cultural difference and communal diversity.

The dialectic of heterogeneity and homogeneity is most evident in Proudhon's contrast between federalism and democracy. In the former, the citizen is allowed to be an individual and to participate in his own political life; in the latter, the mass takes over, meaning that the citizens become victims of self-deception, are riven by paradoxes and contradictions, easy prey to demagogues. He views people in the mass as stupid and fickle, whereas individuals as members of groups with real solidarity and a distinctive character are responsible and wise. The politics of mass democracy, which represents "the people" as unitary and undivided, makes traitors of minorities and generates tyranny. But if people are exposed to federalism, in which one finds a diversified aggregate of real associations of individuals, they will, according to Proudhon, resist tyranny.

Already in the 19th century Proudhon recognized a crisis in the European system of nation-states that in the 20th century would reach its culmination. He found it necessary to reorganize the old continent on the basis of autonomy, first by demystifying state sovereignty and second by internal federalization. The end result would be a European "federation of federations." The legal foundation would be a treaty between individual federations. The economic foundation would be a common market allowing for the free movement of peoples and goods, a convertible currency and a system of compensation between the stronger and weaker member federations. The homogeneity of the units of the economic system would guarantee the unity of this common market. Most important, however, was that, following this aggregation, the process of federalization should expand from smaller to larger units. This European federation should be prevented at all costs from developing a Jacobin type of European unity — a unitary state behind a federal facade. Properly organized, it would provide the model for a fundamental reconstitution of the whole world — a global order of federations.

Proudhon understood that the creation of a global unitary state was nothing more than the shift of centralism to an international body even more bureaucratic than the nation-state. The global order he had in mind would arise gradually from a system of equilibrium agreed upon by a number of federations. The driving and directing principle of this "federation of federations" would be the autonomy of individual "nationalities" (sic). Although he had in mind only groups of people concentrated in a defined area, joined by economic and social interests and able to lead an independent life, the term "nationalities" was unfortunate since it continues to impede federal initiatives. The ethnic connotation of "nationalities" is unavoidable, even though one of the main impulses of integral federalism has been to solve the problem of minorities.

Alexandre Marc and "Integral Federalism"

Half a century after Proudhon outlined his vision of federalism, the crisis of the nation-state reached a turning-point in WWI. A number of movements

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for federalism sprang up during the interwar period, most promoting state federalism. Marc chose "integral federalism" to distinguish his own Proudhonian brand of federalism. In 1930 he and others drafted a "Manifeste pour un Ordre Nouveau,"[21] from which they took the name of their organization and their journal: *Ordre Nouveau*. Since both the fascists and the communists also had initiatives bearing the same name, this decision seems questionable, since these federalists were opposed to both. In October 1931 the movement issued an appeal to young people, written by Marc and one of his colleagues, calling for "a real European federalism" to combat the dangers of a Franco-German confrontation. In May 1935 they participated in a Franco-Italian Congress to discuss problems of corporatism. Opposition to fascism isolated the movement and impeded its political activity. The last regular edition of the journal appeared in July 1937; the last three irregular issues, in 1938, when the movement died.

"Ordre Nouveau" rejected the security system of the League of Nations because it incorporated the principle of nation-state sovereignty. It saw federalism as the only solution to the problem of the destructive politics of the nation-states. On the positive side, Europe formed an organic cultural unity, had a common system of values based on the Judeo-Christian tradition and the primacy of the person, and a wide variety of differences which provided a model of a "coherent pluralism." Given that the problem of national minorities was particularly acute in the interwar period, leading to conflicts of all sorts, "Ordre Nouveau" did not rest content with the notion of Europe as an organic cultural unity and proposed establishing a free trade zone among and between European "nations" which might become the foundation for general prosperity. On the surface, what "Ordre Nouveau" proposed was a kind of customs union. More importantly, however, such a union was expected to assist in overcoming the capitalist economic order. There was more than a trace of socialist thinking in this prospect, since the activities of European nations were to be coordinated by a supranational body based on the principle of the planned protection of vital goods and the free production of non-vital goods.

Like Proudhon, "Ordre Nouveau" also subscribed to a principle of "justice." Rejecting the notion that any superordinate body could transform a legal regulation into a positive norm for the common good, it looked for the sources of law in institutions in line with the maxim: *Ubi societas, ibi jus*. From the standpoint of "group rights," justice should be administered not by the state but by municipal, syndical or federal agencies. In this sense, "justice" is a totality of ethical imperatives and ties to which the members of a given community must submit in order to guarantee an equality of coexistence and a shared purpose. Apart from guaranteeing justice, law also has the task of organizing "the necessary tension between discipline and freedom" in line with the principle that there is no freedom without "a minimum of *order and security*."

21. Among the authors were Arnaud Dandieu (1897-), Robert Aron (1898-1975) and the Swiss Denis de Rougemont (1906-1985).

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With few exceptions, most "Ordre Nouveau" supporters joined the Resistance. Marc also joined the group called "Libérer et Fédérer," which already during the war and particularly after the German collapse established contacts with French, Italian and Swiss federalist groups. Former members of "Ordre Nouveau," along with a group of teachers, some influenced by Catholic social doctrine and some by Proudhon, founded the "Centre d'Etudes Institutionelles pour l'Organization de la Société Française — La Fédération."[22] In 1944 Robert Aron, who became Marc's closest collaborator, founded "La République Moderne" — a group opposed to large, private capitalist enterprises as well as to the nationalization of the means of production. Initially, "La Fédération" concentrated on the regeneration of France, but in 1945/46 extended its efforts to all of Europe. It was mainly concerned with establishing a social order based on family, profession, community and a "functional syndicalism."

Immediately after WWII, integral federalist ideas spread from France to other European countries, especially Italy and Germany. In 1946, the Swiss movement "Europa-Union" organized a conference attended by federalists from fourteen European countries. The result was a mutual declaration for a federal Europe whose constitutive territorial components would be regions organized on ethnic bases: Latin, Slavic, German etc. The "Union Européenne des Fédéralistes" (UEF) was established in December 1946. It brought together various strands of the federalist movement — integral federalists, Hamiltonian federalists, world federalists, Catholic federalists, etc. Most prominent, however, were the integral federalists and the Hamiltonian federalists — the former inspired by Proudhon's *The Principle of Federation* and the latter by *The Federalist*. Whereas the integral federalists sought to organize society from the ground up, the Hamiltonian federalists emphasized the priority of a state unification of Europe with supranational legislative, executive and judicial bodies. The integral federalists wanted to follow the European model of federalism, while the Hamiltonian federalists wanted to follow the American one. Integral federalists promoted the transnational integration of individual branches of the economy, in particular heavy industry, as the necessary precondition for the creation of supranational structures — an approach later called "functionalist" and used in the establishment of the three original "communities" of the European Community (the European Economic Community [EEC], the European Coal and Steel Community [ECSC], and Euratom). The Hamiltonian federalists, whose ideas were mainly advocated by the Italian "Movimento Federalista Europeo" founded in 1943, pushed for the convocation of a European constituent assembly.

The integral federalists' influence peaked in the late 1940s. Once the EC "communities" took on a life of their own, they acknowledged their marginal status and concerned themselves more with the task of "educating europeans"

22. Its members included the Catholic industrialists Jacques Bassot and André Voisin, the publisher of *Le XXe siècle fédéraliste*, Max Richard, and the jurist Georges Scelle.

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through writings and seminars. More active political initiatives began once again a decade later when in 1960 the UEF was transformed into a global organization — the "Mouvement Fédéralistes Européen" (MFE) — at a conference in Montreux, Switzerland. Integral federalism found concrete expression in the "Federalist Charter" drafted in Montreux in 1964. Its purpose was "to form the doctrinal basis for political action." Several initiatives in the Preamble stressed the need "to move away from antiquated liberalism without falling into a dictatorship." It called for greater independence from the US in order that Europe might become the center of attraction for East European nations. In this spirit, the idea of a "European Front" was also raised at the Congress, which led to the formation of a preparatory group that included, among others, Marc and the Italian federalist Altiero Spinelli.[23] It had the task of transmitting federalist thinking to the greatest number of organizations seeking European integration. Almost immediately thereafter, a resolution was adopted at the Congress of the Council of the European Communities calling for a "Democratic Front for a Federal Europe." The most prominent members of this Front worked behind the scenes, although with limited success.

In May 1968, the MFE declared its solidarity with the protestors and published an "Appel pour une Action Fédéraliste." The demands of the French student revolt — in particular the call for the autonomy of all social groups (factory, university, region, etc.) as well as for a regeneration of society from below — seemed to reflect integral federalist ideas. A "Comité de Liaison et d'Action Fédéralistes" was formed, which lasted until 1972 and published a number of works on university reform.[24] In 1969 it adopted a "Federalist Manifesto" which revised the "Federalist Charter" in view of recent events. It projected a longer evolutionary process in the fulfillment of federalism and emphasized the global dimension of the crisis. Roemheld became acquainted with integral federalism in France in 1968. Back in Germany he became a member of the European Federalist Party, an affiliate of the Federalist International (FI) that had been founded in Austria in 1966 and was already represented in a number of West European countries. The aim was to promote European integration through national federalist parties on the basis of a joint European program. In 1974, in Geneva, these national parties merged. But the fact of the matter is that the main political thrust of the federalist movement, and certainly that of the integral federalists, has always been more theoretical than practical.

The first manifesto of integral federalism was written by Marc and Aron.[25] Tracing the decline of democracy in central state structures with "totalitarian"

23. Cf. *Altiero Spinelli and Federalism in Europe and in the World*, ed. by Lucio Levi (Milan: Franco Angelli Libri, 1990).

24. See Guy Michaud, *Révolution dans l'université* (Paris: Librairie Hachette, 1968). See also Alexandre Marc, "Réflexions préliminaires sur la culture," in EEF, No. 38 (1963). Even before 1968, Marc recognized the problem of a "cultural mandarinate," which no longer serves the majority but only the needs of a privileged minority.

25. Robert Aron and Alexandre Marc, *Principes du Fédéralisme* (Paris: Le Portulan, 1948).

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tendencies, they summarized the role of federalism in European history, contraposed it to both liberalism and socialism, and dissociated it from anarchism. They insisted that state institutions are justified, but only in association with local and professional communities and their representative political and economic agencies. Federalism overcomes anarchism by acknowledging the place of government and all other institutions in a new order. In view of the decline of democratic institutions and the growing tendency to resort to the state to solve all problems, they stressed the needs of the individual and the group. Thus they proposed limiting state activity to certain administrative tasks and to the supervision of certain private initiatives (without taking control of either), the destruction of the "feudal" economic structure by popular appropriation and through federal distribution, and the regeneration of democracy in institutions defined by their task. It was presumed that economic, social and political communities of a local and professional nature can make satisfactory decisions concerning their own needs. Marc and Aron opposed the federalist impulse to capitalism, centralism and, even more strongly than Proudhon, liberalism.

The most typical liberal institution — parliament — was seen as a legislative body lacking both the understanding and the ability to act; it was a fictitious *volonté national* which loses its representation in the very process of legislation. Thus they opposed the system of political parties and called for the replacement of representative with direct democracy. The first step in this direction would be the granting of autonomy to regions, consistent with the devolution of nation-states, which presumably would solve the problem of ethnic minorities. It was presupposed that, given their historical obsolescence and inability to deal with increasing demands, nation-states would be led *nolens volens* to a "functional" federalism, thus facilitating the development of "supranational" agencies. These agencies would then coordinate national institutions by devising effective transnational procedures. The result would be a European federation constituting a "third power" between the US and the USSR. Once Europe realized this "true federalism," it would serve as an example for the rest of the world. Ultimately the world itself would be organized as a universal "federation of federations."

Marc alone reproached Marx for applying the very bourgeois categories of thought he opposed and presented integral federalism as the best solution to what he called the "proletarian situation," characterized by uprooting, alienation, loss of individuality, massification, etc. This was seen as the result of the destruction of community, which begins on the level of small farms and extends to capitalist enterprises and large cities, and is evidence of a "crisis," which can only be overcome by "deproletarianization," i.e., the repersonalization of human relations through the establishment of new communities. Marc discusses "deproletarianization" in terms of a three-fold process: "A dispersion of property which replaces a small number of giant capitalist factories or a few nationalized industries . . . by a large number of handicrafts and

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family businesses, etc.; a dispersion of political power . . . because large modern cities with their proletarian populations have often only come into existence as a consequence of the vanity of a sovereign prince or of politicians who speak on behalf of the sovereignty of the people . . . and a dispersion of the population."[26] Property should be reduced to human dimensions by making it personal, communal and functional.

Focusing on the community, Marc envisaged a "federation of families." He proposed the creation of local communities of about 2,500 people, since modern living conditions made smaller units less viable. Each of these new communities would have "its own administration, schools, health system, etc." Each would be able to absorb a large number of workers in its commercial and service sectors and each would have autonomy with respect to its own tax revenues. Predicated on the principle of subsidiarity, only those jurisdictions which could not be handled (or handled as well) on the local level would be ceded to broader agencies. In all other respects each would be a "real little republic" with its own culture, its own legislative, executive and judicial bodies, which would in turn form regional associations autonomous in their own right.

European unification was Marc's next theme.[27] Considering the three treaties that had established the first three European "communities," he approved only of the ECSC. The EEC and Euratom were bound to fail because "they did not provide for any European legislative and executive bodies." He was particularly concerned about "para-governmental federalists," who threatened to repeat the mistakes of the nation-states on a European scale, and this included those promoting formal parliamentary democracy. In line with the Hamiltonian federalists, he was now willing to accept the notion of a constituent assembly, which was the only way to guarantee popular participation in European integration. Thus a European constitution became the central concern of integral federalists.

Integral Federalism in Perspective

In his preface to Roemheld's book, Marc calls it a "useful corrective" to those who think that the work of the Convention at Philadelphia ultimately is fulfilled in the regulation of interstate relations. However, in so doing he presents Hamiltonian and Proudhonian federalism as not only continuous but compatible. Quite aside from the fact that advocates of federalism in general may find common cause in the struggle against centralism, such a conceptual linkage denies the specificity of *integral federalism*. It is one thing to argue, as Marc does, that the origins of the present crisis can be traced to the transition from the Middle Ages to the Modern Age, and quite another simutaneously to present integral federalism as a specific doctrine and a general disposition found in every age.

In adopting the Declaration of Independence, Congress acted for the *people*

26. Alexandre Marc, *Civilization en sursis* (Paris: La Colombe, 1955).
27. Alexandre Marc, *Europe — terre décisive* (Paris: La Colombe, 1959).

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rather than for the *thirteen separate states*, because only four state governments (three of them provisional) had been formed prior to its passage. Thus in early American federalism Congress was constituted collectively by the people rather than by the individual states. While the American states in the Articles of Confederation were comparable to the League of Swiss Cantons, at the time there were greater elements of cultural unity in the US than in Switzerland that made possible the rapid transformation to a federal union. Since for a number of reasons congressional power and prestige declined, "nationalists" such as Hamilton and Madison saw a solution to the problem in the reduction of the power of the separate states and the bestowing of more authority on the central government. Since they were unable to give the central government all the powers they sought, "federalism" was adopted as a compromise. In *The Federalist* Madison distinguished American federalism from earlier loose confederations. The latter presided over communities, while the American Union exercised its power directly over the individual. Ratification was not by the state legislatures but rather by separate conventions chosen by the people in each state. Thus from the very beginning American federalism contained the seeds of the massive centralization that occurred with the Civil War and especially through the New Deal and the emphasis on the Bill of Rights in constitutional law.

By contrast, Proudhon's integral federalism arose in opposition to state centralization following the French Revolution. However much Marc and integral federalists credit the model of modern federalism created by the American Revolution, the trajectory of Hamilton's federalism is the opposite of that of Proudhon's federalism. Marc's and Aron's definition of federalism as the political conception which "facilitates the existence of free human communities that manage to associate without losing their individual characteristics" is diametrically opposed to the democratic centralism of liberalism and socialism. It is also opposed to the concentration of political power in government bureaucracies.

Integral federalism rejects national parliaments and the party system, while supporting democratic participation mainly in independent grassroots communities — which is why it sees a renewal of democracy only in a new form or social and economic representation. Although, in the critical view of integral federalism, economic liberalism has made possible the achievement of a high level of prosperity, especially in Western Europe and the US, its alliance with capitalism has failed to produce a balance between the need to invest, which presupposes an unequal distribution of income, and the need to consume, which requires an equal distribution of income. Integral federalism does not question the principle of private property, but rather the distortions which have attended its development. It offers innovative ideas in economics, but its main emphasis is on the application of four organizational principles meant to solve economic and social problems. First, *autonomy* should be accorded to all territorial (regions, communes, etc.) and functional communities (grassroots organizations, trade unions, production units, etc.). Once it becomes possible for these communities to achieve self-government, meaning that the decisions which

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relate to the community are made in keeping with their needs, the unitary centralized state will become superfluous. Second, *cooperation* between these communities will make it possible for them to overcome their isolation and collaborate with each other to resolve common problems. Third, *subsidiarity* ensures that problem-solving occurs at the lowest possible level of decision-making. Finally, *participation* guarantees that democratic principles will obtain within and between these autonomous communities.

Whatever his reservations about the doctrine, Roemheld concludes that integral federalism offers an alternative to the model of European union based on nation-states, which in his view "already bears the seeds of its own negation and thus of its future internal instability" (20). However, he considers it a "paradox" that the new economic and social order envisioned by Marc and his colleagues must create its own political preconditions. Here he has a point, since integral federalists usually have conceived their political project in terms of the total overthrow not only of the existing means of production but of the whole liberal-capitalist-socialist system. This may explain why integral federalism has failed to influence the decisions of the moment, even after the collapse of traditional nation-states at the end of WWI when conditions for European unification were especially propitious. Rather than engage in the struggle for a European federation, Marc and his colleagues strove for a radical social transformation. As Marc then said: "A good constitution could only accompany, express, and crown this necessary revolution and not precede it or, still less, replace it." In this sense at least, integral federalism has until now been too much the mirror image of utopian socialism. Although Marc denies that integral federalism is an ideology, he has promoted it as a comprehensive philosophy of "diversity in unity." While Elazar claims that the federalist revolution is hidden, Marc thinks that "this revolutionary awareness . . . is today the *sine qua non* of our salvation."

Today the importance of integral federalism concerns its analysis of the deepening crisis of the nation-state and the project of European union. In this respect, three observations will suffice. First, given that *The Principle of Federation* was written in response to the unification of Italy, the present crisis of the Italian state and the growth of the Leagues give Proudhon's thinking a peculiar contemporary relevance. Second, given that Marc has responded to virtually all the major trends and movements of this century, his version of integral federalism provides an elaborate theoretical and historical context. Having pursued Proudhon's ideas to their logical conclusions, he has demonstrated the limits as well as the possibilities of new economic and social arrangements. Third, Roemheld's book contributes to the present discussion about federalism in general and European union in particular by offering a comprehensive view of a political approach that may only now be beginning to find its concrete realization.

G. L. Ulmen

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Forgetting Benjamin

Susan Buck-Morss, *The Dialectics of Seeing: Walter Benjamin and the Arcades Project* (Cambridge: The MIT Press, 1989).

The recent wave of publications about Walter Benjamin[1] indicates a growing interest in the works of this most esoteric and least predictable thinker of the Frankfurt School.[2] 1992 marks the 100th anniversary of his birth and, 52 years after his death, he finally seems to have attained the status of a classic. The eclectic character of his work, his succinct prose spanning over several disciplines and perhaps his life as an intellectual without institutional ties, have attracted considerable attention. His later works on technology, art and politics have contributed to the emergence of Cultural Studies. Yet, for various reasons, his writings are still not widely available in English. Notably absent is the *Arcades-Project*,[3] Benjamin's collection of material for a history of Paris in the 19th century, first edited and published by Rolf Tiedemann in 1982 and now filling two large volumes of the *Gesammelte Werke*. Long before its eventual publication, the *Arcades-Project* was surrounded by mystery. It was hoped that this material, Benjamin's legacy, would finally resolve the debate between those who saw him as a Marxist and those, among them his close friend Gershom Scholem, who regarded Benjamin's flirtation with historical materialism as a passing episode in Benjamin's development.

Given the unavailability of the *Arcades-Project* in English, Susan Buck-Morss' *Dialectics of Seeing* is a welcome introduction to Benjamin's ambitious project. Since this work will probably remain for some time the sole access to the *Arcades-Project* for English readers, it deserves critical attention. The danger is that her systematic reconstruction of the fragments' "inner structure" (p. 211) — for nothing but fragments remain of the book Benjamin never completed — becomes indistinguishable from the *Arcades-Project*. Of course, systematic rigor

1. Cf. Rainer Nägele, ed., *Benjamin's Ground. New Readings of Walter Benjamin* (Detroit: Wayne State University Press, 1988). Uwe Steiner, author of *Die Geburt der Kritik aus dem Geiste der Kunst* (Wirzburg: Könighausen u. Neumann, 1989), is preparing an anniversary collection of new essays on Benjamin. The two most recent editions of *Modern Language Notes* are dedicated to Walter Benjamin. For a recent bibliography of Benjamin's translated works, see Gary Smith ed., *On Walter Benjamin. Critical Essays and Recollections* (Cambridge, MA: MIT Press, 1988).

2. Benjamin, however, was never an official member of the Institute of Social Research. For an account of his relation with the Frankfurt School, see Bernd Witte, *Walter Benjamin. Mit Selbstzeugnissen und Bilddokumenten* (Hamburg: Rowohlt, 1985).

3. The exception is the so-called "Konvolut N" which appeared in a revised translation in Gary Smith's *Thinking Through Benjamin* (Chicago: University of Chicago Press, 1989).

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per se is not an argument against *The Dialectics of Seeing*. After all, Benjamin himself was a systematic thinker. His "Program for the Coming Philosophy" (1918) envisioned a philosophical system founded on the tripartite structure of Kant's *Critiques* modeled after the theological doctrines of medieval Scholastics. Once Benjamin even toyed with the idea of writing on Scholasticism. Even after he had abandoned this and other dissertation projects in favor of *The Concept of Art-Critique in German Romanticism*, concern with philosophical systems remained a central focus of his exposition of Schlegel. This and other texts clearly indicate Benjamin's skepticism towards any hasty hypostasization of "fragments." In other words, opposing the anti-systematic Benjamin of playful fragmentation to the systematic Benjamin reproduces the familiar antagonism, but cannot be grounded in his own work.

Buck-Morss' account can legitimately lay claim to such a foundation. Her well researched book draws on a variety of sources. Numerous illustrations in the text make available for the first time some of the visual material Benjamin had at hand in the Bibliotheque Nationale where most of the excerpts were compiled. Most importantly, however, Buck-Morss has made every effort to contextualize the *Arcades-Project* and anchor it within Benjamin's *ouevre*. Her otherwise concise account of the *Trauerspiel*-book, however, is problematic because she fails to inform her readers how this work relates to Benjamin's times. He explicitly stated his intention to write the "ur-history" of Modernism, the genesis of contemporary Expressionism. Consequently, the *Trauerspiel*-book cannot be relegated to some arcane past. Buck-Morss' attempts to distinguish the *Trauerspiel*-book from the *Arcades-Project* are not convincing. Her claim that the *Trauerspiel*-book was written "from the political perspective of radical pacifism rather than revolutionary socialism" (p. 170) is far-fetched.[4] If "dialectical images," which emerge as the intersection of past and present gain their political spark from the present, the "Now of Recognizability,"[5] then the *Trauerspiel*-book is as political as the *Arcades-Project*. If, on the other hand, the difference in the material is emphasized — the once popular and now deserted Arcades of Paris and some idiosyncratic, almost forgotten 17th century German plays — then Buck-Morss' insistence on the structure, method and presentation of the material as politically decisive is less convincing. What is at stake here goes beyond the question of how one particular work might relate to another, but concerns the precarious and for the *Arcades-Project* central question of the relation between material and method.

4. The argument that the *Arcades-Project* is a "Marxist refunctioning of the philosophical method of the *Trauerspiel*-book" (p. 176) can be supported by Benjamin himself who perceived the book as "already dialectical" but "certainly not Marxist" (p. 175). Since the dissolution of the distinction between method and content is clearly the shared concern of both works, they cannot be differentiated on the basis of these categories.

5. Walter Benjamin, *Gesammelte Werke*, ed. by Rolf Tiedemann, V,1 (Frankfurt a/M: Suhrkamp, 1982), p. 578. All Benjamin quotations refer to this edition, henceforth abbreviated as GS, volume and page number.

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In more general terms, Buck-Morss' inattention to earlier works such as "On Language as Such and Human Language," the essay on "The Task of the Translator" and the crucial "Critique of Violence," is so obvious as to be conspicuous, particularly in light of how frequently the later Benjamin returned to these texts.[6] The discussion of myth suffers from the fact that Buck-Morss did not take into account the earlier Benjamin's critical assessment of myth in texts such as the essay on Goethe's *Wahlverwandschaften* or "Fate and Character." The deep suspicion Benjamin reserved for myth as the demonic realm of ambiguity undermines Buck-Morss' claim that Benjamin wants to redeem myth as truth. The role of "awakening from the dreamworld" in the *Arcades-Project* is analogous to the function Benjamin had once accorded to "judgement" (*Urteil*), which literally cuts through and dissociates the mythical web of demonic ambiguities. The immediate association of awakening with revolutionary action looses some of its power if awakening is understood in terms of judgment. Here as elsewhere Buck-Morss' notion of myth is more indebted to Adorno's and Horkheimer's *Dialectic of Enlightenment* than to Benjamin.[7]

These and other possible objections regarding potential oversights and blind spots in the *Dialectics of Seeing* may be illustrated by a marginal observation. Despite her meticulous research, Susan Buck-Morss is human and thus subject to errors. Misspelling "Odradek" is no big deal; making him the hero of Kafka's "Metamorphosis" while he belongs to "The Care of the Family Man" is also no big deal — were it not for the fact that Benjamin has written extensively on the figure of "Odradek" and were it not for the fact that he calls Odradek "the disfigured shape of things forgotten."[8] Of course, there is no hermeneutic law against forgetting — forgetting is the law of hermeneutics — thus marking the limit of this or any other objection; like any reading, they are all open to debate. Moreover, the author offers in advance two very striking justifications for potential shortcomings. First she brings to bear her pedagogical

6. In his letters Benjamin repeatedly requests Scholem to send him the original of his early pieces which often remained unpublished and circulated only among a few friends.

7. The same could be said of her concept of nature. There are few thinkers in the 20th century — and certainly none among Marxists (least of all Adorno) — who thought so little of nature (sometimes to the point of disdain) as Benjamin. Buck-Morss recurs to Ernst Bloch, Lukács' notion of technology as second nature or Adorno's dialectic of nature and history somewhat too quickly. In her account these references tend to overshadow Benjamin's nuances. Her tendency to overestimate the role of "nature" betrays its idealist foundations probably most clearly in her discussion of women (pp. 99-105). Little attention is paid to the prostitute, undoubtedly the most important female figure in the *Arcades-Project*. Instead Buck-Morss claims that "woman is a central figure [. . .] because women's fecundity personifies the creativity of old nature" (p. 99). Here as elsewhere one would have wished for a less idealizing and more critical attitude toward Benjamin, particularly since the representation of women throughout his work echoes some precarious ideas about male and female creativity voiced in early works, e.g., the closing pages of the "Life of Students" and in a review Buck-Morss quotes several times (GS, III, 151-53).

8. GS, I, 2, 431.

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motivation to make the hermetic *Arcades-Project* accessible. Secondly, she emphasizes Benjamin's political relevance. Though she never looses sight of her guiding concerns, Buck-Morss would, with one exception,[9] readily concede the existence of many tensions within Benjamin's project. She refuses to state any of these problems at the outset but skillfully inserts them at strategically opportune times. Consequently all of the potentially systemic problems within Benjamin's project are neutralized by their appearance within an increasingly complex account: "As a conceptual arrangement of Benjamin's research into the history of Paris in the nineteenth century, it begins with simpler ideas and builds on them [. . .]" (p. 57). The growing complexity has a temporal index. Contrary to her disclaimers, the book does not "proceed roughly chronologically" (p. 57) but *fundamentally* so. Thus it begins with origins (i.e., the beginnings of the *Arcades-Project* and the notion of origin it thematizes). After these synchronized "ur-histories" the narrative moves into 19th century Paris then on to Benjamin's time, and without any significant interruption it reaches the present, which is included through some of Buck-Morss' own "dialectical images." As "after-images," they give the impression of the persisting validity of Benjamin's practice.[10] This large-scale chronology of historical time is repeated on the smaller scale of Benjamin's own life. The biographical chronology is in turn superimposed onto the genesis of the *Arcades-Project*. These multiple but linear and simultaneous chronologies allow the author to shelter the *Arcades-Project* from any internal tensions. Thus the problem of the utopian source of dialectical images never arises. Instead Buck-Morss argues that the utopian

9. The exception is her firm insistence on an uncomplicated notion of "the collective." On this point she is even more conventionally Marxist than Brecht or Adorno who, in other respects, assumed the role of guardian over Benjamin's Marxism. The notion of collectivity advanced by the 1935 exposé rightly caught Adorno's critical eye and led him to argue that this collective would not differ much from Jung's, which proved to lend itself so easily to fascist manipulations (GS, V, 2, 1129). The collective Buck-Morss works with rests on the 1935 exposé. It is modeled entirely on the individual subject -- "of course Benjamin clearly did affirm human subjects as autonomous agents [. . .]" (p. 246). With this kind of subjectivity as its theoretical base, the collective must be immune to history (because history is only the medium of its self-realization) as well as to class differences (which Adorno pointed out on the occasion of the exposé). The theory of the collective as it informs this book is a striking example of the deep rooted affinities between a certain Marxism and a certain Idealism. To precisely what an extent this is Benjamin's problem is not at issue here. But he certainly was not as unambiguous on this question as the author of *Dialectics of Seeing*.

10. Of course, the author goes to great lengths to stress the fact that all truth has, in Benjamin's words, a temporal core (*Zeitkern*). There are some complex passages dealing specifically with the problem of truth-claims and historicity or transiency (p. 19f.). They foreshadow her later explanation of the respective temporalities operative in the allegorical and the symbolical mode. The symbolic is defined as "fleeting eternity" and the allegorical as "eternal passing" (p. 19). Buck-Morss' solution that, for Benjamin, what is "eternally true can thus only be captured in transition" (p. 20), is at least arguable. As it stands, it sounds more like Goethe than Benjamin.

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dimension recedes into the background as Benjamin grew increasingly disillusioned with the political reality of the 1930s (p. 304). As a result of the book's chronological structure, the reader is presented with only half (or less) of the issue at any given point. Thus Adorno's response to Benjamin's 1935 exposé is dissected into isolated objections which are discussed separately. Spreading Adorno's critique over time reduces its overall impact; at one point the reader is told that the differences between Adorno and Benjamin were a matter of personal style (p. 67); at another, that their disagreement concerns exclusively the role of popular culture (p. 121). These and a number of other problems are explicitly recognized by Buck-Morss when their time has come, when they can be introduced safely without disturbing the equilibrium of the whole. This method can be fruitful; at the beginning of the book Buck-Morss' recourse to schematic representations in the form of diagrams is admittedly nothing but a heuristic device. Near the end, the author can substantiate her guesses by hard textual evidence (pp. 214-15).

But Benjamin probably would have been served better with a less chronological and more critical reading. Along with all chronologies this one also has an organizational principle with a beginning and an ending. In Buck-Morss' book, they coincide in utopia because the "code in which they [i.e., decaying objects like the Arcades,] are redeemed is the ur-old theological myth of *worldly utopia as the origin and goal of history*" (p. 241-2, emphasis added). Predictably and despite Buck-Morss' repeated disclaimers, chronology cannot escape teleology. And where teleology is found, theology is never far off. So long as chronology provides the organizing principle, the last truly transcendent instance which lends credence to Buck-Morss' claims can be nothing other than dogma. Benjamin's book, she asserts, consists of "philosophical intuitions" and her arguments for Benjamin are rooted in sharing those intuitions — "he held onto his philosophical intuitions tenaciously because, *quite simply, he believed them to be true*" (p. 7, emphasis added). Thus the battle of the Benjamin-reception is less decided than dissolved into the amalgam of a mystical Marxism, and Brecht's suspicion that Benjamin was a mystic with an anti-mystical attitude is confirmed. Buck-Morss' passionate enthusiasm cannot gloss over the antiquated character of her theoretical construction and politics. If one agrees with her account of Benjamin, then one must agree with its underlying Marxism, complete with the assumption of a stable collective as the agent of universal history on the way to its *telos* — the new world in which nature and society are reconciled. In short, the book's success would be Benjamin's failure to adhere to the strongest principle of his thought: the resistance to chronology. As it turns out, chronology is not just a function of Buck-Morss' didactical impulse but the very fulcrum of her account and permeates the concept of history she proposes down to its core.

The problem, then, is not systematicity but chronology.[11] Any chronological

11. A particularly telling example of the way in which the chronology influences her

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account of the *Arcades-Project* — however much the author tries to convince her readers that it is not teleological (p. 54) — is headed in the wrong direction. If there is one single issue which lends coherence and continuity to Benjamin's work it is, ironically, his resistance to all forms of continuity, including chronology. In its incompleteness the *Arcades-project* is a monument to this effort.

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exposition is the gradual unfolding of the term "ur-history." Throughout her book "*Urgeschichte*" refers to the classless society that this concept only signified so unambiguously in the 1935 exposé where Benjamin wrote: "In the dream in which each epoque appears to the following in images, the latter are wedded to elements of *Urgeschichte*, i.e., a classless society" (GS, V, 1, 47). The chronological sequence in which the different meanings of *Urgeschichte* are developed absorbs the differences or even contradictions which exist between one meaning and another. After the initial definition of *Urgeschichte* as classless society, the 19th century is introduced to take its place. Industrialization, argues Buck-Morss, brought about a radical break with the earlier *Urgeschichte* because for the first time it made possible the realization of a "truly human history" (p. 67). The common origin of these two notions of *Urgeschichte* is guaranteed by the utopian source. What sustains this interpretation (beside the early exposé and Georg Lukâcs who, for many bourgeois intellectuals in the 1920s, was the preferred Marxist authority — in fact, Benjamin did not begin to read Marx seriously until after he had begun the *Arcades-Project*) is a question Benjamin once posed: "When and how will the condition of society be reached in which these forms [i.e., those of modern technology] or those that have arisen from them open themselves up to us as natural forms?" (p. 146). Buck-Morss forgets to add that this question is a formulation of what Benjamin (with Valéry) perceives as the "form problem of new art" (GS, V, 1, 500). Whether by that he really meant "socialist culture" (p. 146, also earlier, p. 123) is open to debate. But if Benjamin was indeed, as Buck-Morss claims, "concerned with the transition to socialism that comes after the revolution" (p. 123), how could he at the same time "provide criteria for a critique of culture production under capitalism" (p. 145)? What holds these two different aspects together is also what links first and second *Urgeschichte*, i.e., Marxist teleology: "The socialist transformation of the superstructure, which begins within capitalism under the impact of technology, includes redeeming the past, in a process that is tenuous, undetermined and largely unconscious" (p. 124). Only very late, almost at the close of the book, the third notion of *Urgeschichte* emerges. Every generation of children, Benjamin claims, performs "something irreplaceable" (GS, V, 1, 576) because it reinvents *Urgeschichte* (GS, V, 2, 1052-55). This did not escape Buck-Morss. Unfortunately her assessment of the child is as tainted by idealism as her assessment of women. For her the affinity of perception and action that governs children's behavior is most important because it justifies her own emphasis on visuality and creativity. But what seems at least as important to Benjamin is the child's ability to "re-cognize the new" (GS V, 1, 493). If utopia, if happiness, assumes any shape at all in Benjamin who, contrary to the impression conveyed by the *Dialectics of Seeing*, rarely paints a picture of humanity reconciled, it is this: "to have it again *and* for the first time." This temporality, the strict simultaneity of old and new, is set against any progressive, evolutionary, developmental or otherwise chronological model on the one hand and against Nietzsche's eternal return on the other: again *and* for the first time. This can never be possible within the kind of time that just passes as infinite flow. It can never take place in a future, only in the past and not in the past "as it has actually taken place" (p. 95) but only in past possiblities: "The kind of happiness that could arouse envy in us exists only in the air we have breathed, among people we could have talked to, women who could have given themselves to us" (GS 1, 2, 693).

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One of Benjamin's earliest pieces, "The Life of Students," began with the unambiguous dismissal of that time perception in which all chronologies inevitably partake: "There is a conception of history that, trusting to the infinity of time, distinguishes only the tempo of man and epochs which roll forward quickly or slowly on the path of progress."[12] For Buck-Morss the forward movement (or, rather, the circular movement back to the origin that is the *telos*) of history is interrupted and slowed down by repeated throwbacks. But that cannot throw her or history off track. They remain on course because they are on the way to a humane society, on the way to utopia, "the origin and goal of history." Clustered around this credo are a number of other familiar assumptions: that technology is "inherently progressive" (p. 143)[13]; that the number of wish images a collective produces documents society's "healthy development" (p. 27); that a notion of the collective is to be modeled on "human subjects as autonomous agents" (p. 246). All of these are rooted in the concept of history Benjamin tried to break from. Whether he succeeded is another matter. His stern resistance to it, however, made him unreliable for many other Marxists. They rightly feared that some of the pillars of traditional Marxist theory would not withstand the thrust of his thought.

Within Buck-Morss' chronological framework none of these radical notions is ever given the chance to develop any of their critical impact. Her *Dialectics of Seeing* is a passionate account of Benjamin. But as such it leaves no doubt about what should *not* be expected from Benjamin now: any modification of historical materialism. Benjamin's contributions are limited to two aspects. First, there is the need for Marxism to engage theology: "Without theology (the axis of transcendence) Marxism falls into positivism; without Marxism (the axis of empirical history) theology falls into magic" (p. 249). Second, as it redeems popular culture Benjamin's *Arcades-Project* provides a convenient corrective to Adorno's negative verdict on the culture industry.[14]

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12. GS II, 1, 75.

13. Any sensible use of the epitaphs "progressive" and "regressive" depends on the temporal lag between base and superstructure. In his essay "The Artwork in the Age of Mechanical Reproduction," Benjamin not only granted the superstructure its own dialectical dynamics, as Buck-Morss points out, but he also wrote under the assumption that the temporal gap between the two has closed, so that developments of base and superstructure are now simultaneous. (See my "Zeit zur Darstellung" in *MLN*, Vol. 107 [April 1992]). This aspect aside, the problem of technology in this and other Benjamin texts is usually cast in terms of means and ends. For technology to be truly "progressive" it must not have any end at all and become pure means, which is to say: immediate medium that by virtue of being a medium cannot be used to any end. In his essay "On the Critique of Violence" the notion of pure means is exemplified by linguistic exchanges Benjamin calls the "technology of conversation" ("Unterredung als Technik ziviler Übereinkunft," GS, II, 1, 192). Cf. Werner Hamacher, "Affirmative, Strike," in *Cardozo Law Review*, Vol. 13 (December 1991), p. 1133-57.

14. As with other claims advanced in the early parts of her book, Buck-Morss' emphasis on Benjamin's anti-scholarly and pro-mass culture position gradually weakens. Only on p. 158 is she really willing to stress that the Arcades and related objects are of

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Having overemphasized Benjamin's anti-philosophical stance (anti-idealist is not the same as anti-philosophical) the author apologizes for her systematic and philosophical rendition of Benjamin's fragments. Of course, no one expects a critical exposition to become a slave to its object, and there is no question concerning the necessarily destructive aspect of any critical exposition. But to claim to proceed "mimetically" (p. ix) and then ground a book on the Arcades which was written against chronology in chronology is an altogether different matter.

But critique on the basis of one point, however crucial, will not suffice. *The Dialectics of Seeing* is a rich and complex book. For several reasons, the relation between the material and the method of its representation in the *Arcades-Project* offers itself as a particularly rewarding site for further exploration. To a certain extent this discusssion can be severed from the chronological continuum within which it is embedded. The centrality of this particular problem for Benjamin reflects back upon Buck-Morss' own method and how she relates her material.

For Benjamin the very question of method and material, of the facts and their representation, borders on the absurd — as if the data could ever be considered separately from their (re)presentation (*Darstellung*). What Benjamin rejected so vehemently in the reductive empiricist account of experience is the assumption of the existence of "material" or "facts" prior to and independent of their interpretation. He fought it with the same uncompromised vigor as its counterpart, *Lebensphilosophie*, which ignores mediation and simply endows subjective experience with metaphysical virtues. Benjamin's desire for a third notion of experience, distinct from *Lebensphilosophie* and positivism alike, underlies the *Arcades-Project* and many of his other works, from the "Program of the Coming Philosophy" to the essay on Surrealism. Buck-Morss refers to this notion as "cognitive experience" or "philosophical intuition." Tiedemann has described it more cautiously as Benjamin's attempts at an "anti-idealist construction of the intelligible world" (p. 175). Insofar as the *Arcades-Project* presupposes some unity between material and method,[15] it is the attempt to solve the question of their relation in such a way that the question itself becomes obsolete or is so radically transformed that other questions emerge.

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importance to Benjamin precisely because "these decaying structures no longer hold sway over the collective imagination." That the Arcades became ruins before they ever really blossomed and are therefore as forgotten as strange 17th century plays is why Benjamin was interested in them and it is another indication of their common philosophical and political ground. If the state of forgetfulness into which the icons of mass-culture have fallen is the measure of their importance for Benjamin then this inserts an important qualification into the claim that Benjamin redeemed mass-culture.

15. In fact, for Benjamin, the dynamic unity of method and matter defines dialectical materialism: "What characterizes dialectical method is the development of new methods as it turns to new objects" (GS, V, 591). In the same vein, in another entry in "Konvolut N," he writes: "This work must develop the art to quote as much as possible without quotation marks" (GS, V, 1, 572). The conventional difference between the quotation and its commentary was to become invisible.

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Initial indication of an interdependence between method and material in the *Arcades-Project* is the fact that both are fragments.[16] To what extent this was to have been their common (non)ground and to what extent their fragmentary status is either a function of incompleteness or of objective impossibility, can no longer be determined. Consequently, one must ask what would allow for any convergence between matter and method. Many key-notions of the *Arcades-Project*, including the "dialectical image," were meant to address this issue. None of them have been elaborated sufficiently — unlike earlier, similar notions such as the triad of "origin," "monad" and "idea" in the *Trauerspiel-book*.[17]

Despite Buck-Morss' efforts to make heterogeneous concepts coalesce into a monumental "panorama" of the theory behind them, either the tensions within Benjamin's project are strong enough to endure, or Buck-Morss' rigid framework is sufficiently flexible to allow them to surface. Contrary to her account, these tensions need not necessarily fall along the lines of system vs. fragment, materialism vs. mysticism. Raising the question of whether Benjamin's dialectical images are either too subjective or too objective — something the author discusses in the latter part of her book (p. 219ff), indicates unresolved conflicts.

Among the concepts meant to capture the unity of theory and material is Goethe's "*Urphänomen*." Buck-Morss' interpretation follows Georg Simmel, whose lucid explanation motivated Benjamin to use Goethe's term in his own work. The idea of the "*Trauerspiel*" could be considered an ur-phenomenon in the realm of history (for Goethe, ur-phenomena were strictly limited to nature). Following Simmel, Buck-Morss identifies ur-phenomena as "the genial synthesis of essence and appearance" (p. 71). Moreover, ur-phenomena — including "economic facts" (p. 73), the physical edifice of the *Arcades* and many other things — express the identity of fact and theory. In Goethe's own words: "One would never search for anything behind the phenomena, they themselves are the theory" (p. 72). Without hesitation, Buck-Morss takes this to mean the dissolution of theory into the immediacy of the facts which "speak for themselves" and "the phenomena which shine brightly" (p. x). Of course, the same claim could be read to mean the exact opposite: all phenomena are already theoretically mediated. Yet for Buck-Morss economic facts qualify as ur-phenomena

16. The main portion of the explicitly theoretical notes are collected in "Konvolut N." It was to be the source for the "epistemological preface" Benjamin intended to write and it was the source for the "Theses on History." Yet "Konvolut N" is by no means the sole place for theoretical reflection. Numerous passages are interspersed throughout the almost 1000 pages of excerpts. Whether, in Buck-Morss' words, Benjamin's comments are "really only a series of captions to the world outside the text" (p. x), or which ones are theoretical and which are not, cannot be readily established.

17. On the notion of origin in the *Trauerspiel*-book see Samuel Weber, "Genealogy of Modernity: History, Myth and Allegory in Benjamin's Origin of the German Mourning Play" in *Modern Language Notes*, Vol. 106 (April 1991), pp. 465-500.

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"because of Benjamin's belief that metaphysical essences were immediately visible within the facts" (p. 73). But this reading is only possible because the author (who otherwise never misses an opportunity to produce evidence for her theses from texts other than the *Arcades-Project*), neglected to consult Benjamin's own discussion of ur-phenomena at the end of his dissertation, where he prefigures both the project of the *Trauerspiel*-book and the later *Arcades-Project*.

The closing section of *The Concept of Art-Critique in German Romanticism* is explicitly concerned with questions of method and content. Here Benjamin confronts Schlegel's concept of art and art criticism with Goethe's notion of "*Urbilder*." Whereas the Romantics found the *a priori* of method in the "idea," Goethe concentrated on the "ideal" as the a priori of content or material. Benjamin leaves no doubt that *Ur-bilder* are *not* immediately visible: "Pure contents as such cannot be found in any work."[18] They are, he says, "invisible (*unsichtbar*) yet graphic (*anschaulich*)." Goethe's *Urbild* as the ideal of art provided Benjamin with the necessary critical supplement to the Romantics' idea. Yet he criticized Goethe's notion of nature because, as is well known, Goethe searched all over Sicily for the ur-plant he would never have sought in art. In Benjamin's eyes, the concept of true nature, i.e., nature as ur-phenomenon ("*urphänomenale Natur*"), is "not only not identical with visible nature but it must be rigorously distinguished from it."[19] Thus Benjamin concludes his first book claiming that what is needed is the concise articulation of the relation between idea and ideal, between the *a priori* of method and that of content. The *Trauerspiel*-book and the *Arcades-Project* attempt to do just that. At any rate, the notion of ur-phenonmena was not simply taken over from Goethe or Simmel but was transformed.[20] The "immediate visibility" of ur-phenomena that Buck-Morss stresses would have to be differentiated from the graphic quality as an already mediated immediacy. One of the most remarkable and earliest entries in the *Arcades-Project* makes it clear that as ur-phenomena the Arcades (most of which had been demolished by Haussmann) are not only no longer visible but in a way have never been at all: "All of this is the Arcade in our eyes. And nothing of all this has it ever been" (GS, V, 2, 1045). If the Arcades as ur-phenomena are not and have never been immediately visible, then the convergence of method and data cannot, as Buck-Morss tries to convince

18. GS, I, 1, 111.

19. GS, I, 1, 113.

20. As Buck-Morss points out, Benjamin considered Simmel's paraphrase applicable to his *Trauerspiel*-book. But the shift from nature to history makes all the difference. The true concept of nature Benjamin has in mind might very well turn out to be history. This can be seen in the essay on "The Task of the Translator" where the only (natural) life is the historical (after)life of the work in the translation. Whether Benjamin's thought on life and history can be easily "translated" into the dialectic of nature and history in Adorno's thought (which Benjamin quoted in the *Arcades-Project*) is questionable. To see in this reference to "natural history" nothing but a "dialogical gesture" (p. 176) towards Adorno's contribution to the *Arcades-Project* overlooks Benjamin's theory of quotation.

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her readers, be delivered over to a dialectics of *seeing*. It is her belief, and not Benjamin's, that metaphysical essences are immediately visible.

The consequences of her enthusiastic emphasis on immediate visibility and concrete presence quickly catch up with Buck-Morss. They stand out as major contradictions within the text's rendition of Benjamin's method. As it turns out, the discussion of ur-phenomena leads directly into the discussion of another very different model of the relation between method and material. The name of this "conscious principle of construction" (p. 74) is "montage," and its emblem is the Eiffel tower: "Benjamin's commentary in which those facts are embedded provided the rivets that allowed the fragments to cohere as the philosophical representation of history as a total event. [. . .] In fragmentary images, the essences appear concretely, but it is the philosophical construction that, even if invisible, gives support and coherence to the whole" (p. 77). The terminology of part and whole, form and content, material and structure, speaks for itself. Ur-phenomena, intentionally designated to express the unity of method and data, essence and appearance, concrete and universal, are after all still in need of the philosophical whole. The particular needs its universal, and the fragmentary material needs the philosophical construction to lend it coherence. Thus Buck-Morss can move from ur-phenomena to montage without missing a beat. If she had been less emphatic on the issue of immediate visibility of metaphysical essences, then things could have looked a little different. Whence the need to reassign ur-phenomenon and montage their respective positions as place-holders for what used to be called content and form? Why not concede that both montage and ur-phenomenon are competing, yet related models? They both attempt to articulate a specific kind of unity or interdependence of method and material. The concession that there are several competing models, including the "dialetical image,"[21] could be understood as an indication of how much Benjamin struggled with this issue. It is unlikely that he envisioned any recycling of the traditional dialectic of part and whole, content and form, matter and method.

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21. The very same philosophical distribution constitutes the paradox or, as Buck-Morss says in Benjamin's own words, the ambivalence of the dialectical image: "As an immediate quasi-mythical apprehension, the dialectical image was intuitive. As philosophical construction it was not" (p. 220). There is simply no way to get beyond the impasse of this "on the one hand, but on the other." Perhaps there *really* is no way (which is the conclusion Jürgen Habermas, Rolf Tiedemann and others have reached). Yet Buck-Morss' book leaves the impression that *she* is not really willing to take up Benjamin's challenge: to think in categories other than particular and universal, subject and object. She resists this challenge for good reasons: the surrender of those categories is tantamount to surrendering Marxism. In response to such an argument by Hans Robert Jauss she writes: "Of course, just the claim to objectivity is what the Marxist tradition cannot abandon" (p. 223). But her insistence on objectivity only mirrors Jauss' relativizing subjectivity. In a way, the categories of objectivity and subjectivity would no longer be applicable if Benjamin's notions of experience and materiality could be considered not as the alternative *between* but an alternative *to* subjectivity and objectivity.

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Yet there is a significant difference between Buck-Morss' account of ur-phenomena and her discussion of montage. The latter could point to another reading of the *Arcades-Project*. In contradistinction to her discussion of ur-phenomena, her elaboration of the montage principle is determined by the image of the Eiffel tower, which is to say: her theoretical articulation emerges from intimate contact with the object. Unfortunately, this "method" of theoretical extrapolation from the "data," (which she claims to follow throughout but hardly ever does because she does not read any other image in the same way as the Eiffel tower), remains subservient to the task of distinguishing the visible data from their invisible philosophical construction. Moreover, the world-famous Eiffel tower hardly qualifies as part of the " 'garbage heap' of modern history" (p. 217). It is not a typical object of Benjamin's collection. But there are others, e.g., those objects collected in section I of the *Arcades-Project*, entitled "Interieur, Trace." Its very title suggests the possiblity of extrapolating the theory out of the concrete example without recourse to the separate categories of material and commentary. Furthermore, this section indicates once again that Benjamin was not at all after "the things themselves": "We are after the *traces* of things."[22] The trace is a particularly powerful example of a different kind of synthesis between method and matter. That readers of the *Arcades-Project* are left with the traces of a book that never was helps underscore the specificity of the trace: in a way there is neither immediate data nor a method nor their unity but instead we have, and Benjamin only had, traces. The trace might escape the dialectic of fragment and construction, content and form because it is both, more and less than concept and object. As such, it satisfies Adorno's request that "the objects decipher themselves as their own theory."[23] Buck-Morss chose not to follow these kinds of traces. For her,

22. GS V. 1, 281: "Wir aber sind mit solcher Gewißheit der Seele weniger als den Dingen auf der Spur." The German is ambivalent and my translation makes explicit the latent ambivalence: to be after *and* to be after the traces of things. As a singular entry this quotation would not justify such a speculative translation. But the trace is a consistent "motif" in the *Arcades-Project*. Moreover, Benjamin himself frequently plays on the readability of his entries. When he "exclaims: 'Iron as revolutionary building material'." (p. 129), the original context makes clear that he means it both in the general sense (i.e., iron is "inherently progressive") and in the literal sense (ironic by contrast): iron was originally used only for constructions related to transportation. The ironic transformation of the word "revolutionary" (which prior to the 18th century signified the circular motion of planets, e.g., the slow rotation of Saturn) in Benjamin's text is a matter of reading (rather than seeing). Such instances lend legitimacy to my one-sidedly ambivalent translation.

23. GS, V, 2, 1131. Adorno was the the first to shed some critical light on Benjamin's enthusiasm for the immediacy of dialectical images. He reminded him that the "ambivalence of the image is the *trace* of the dialectic" (GS, V,2, 1135, emphasis added). It could be that Benjamin, who retained the section title "Interieur, Trace" which had found no place in the 1935 exposé, accepted this advice. But it could also be that he was a step ahead of Adorno and a certain kind of "readability" was already built into the fragmentary structure. This would assign a new and unexpected meaning to Buck-Morss' passing remark that the "dialectical image" is a "hermeneutic strategy" (p.

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traces are objects like the Arcades. They are the fossilized remnants of shattered utopian dreams and broken promises of happiness.

Only late in her book is a second meaning of trace introduced in relation with the detective. Not surprisingly, these two notions appear hundreds of pages apart and their link is once more chronological: "Even after his early, metaphoric Ur-landscape of consumer dinosaurs recedes, Benjamin sustains the physiognomy of the fossil in the idea of the trace (*Spur*), the imprint of objects particularly visible in plush bourgeois interiors or the velvet lining of their cases (here ur-history turns into a detective story, with the historical trace' as clue" (p. 211). But — and this is why the author forgets to *read* the third and perhaps most original sense of trace — she already knows whence the traces came from and to what conclusion they have to lead. For her they are only missing links in the continuum of history that originates and culminates in utopia: they are orientation markers for the transition to socialism. But Benjamin wrote of traces that they "have no sequence and no system. They are the product of chance and bear the traits of essential incompleteness (*Unab-schließbarkeit*)."[24] That is not to say that they are random, given over to subjective arbitrariness, as Buck-Morss might fear. The metaphorical context of hunting leaves no doubt that this sort of tracing is a decidedly dangerous activity. In the very contingency, the inability to anticipate the next move, lies the danger — and the chance.[25] In the ensuing passages hunting unfolds into a metaphor of reading: "The text is the forest, in which the reader is hunting."[26] In perhaps the most frequently quoted definition of the dialectical image, Benjamin does emphasize the visuality Buck-Morss' "picture-book" (p. ix) tries to capture: "Image is dialectic at a standstill. For while the relation of the present to the past (*Vergangenheit*) is purely temporal, the relation of what has been (*gewesen*) to the present is dialectical: not of a temporal but of a dialectical nature."[27] But the passage concludes by transforming the image itself into a trace in need of reading and dangerous to read: "The image *read*, that is to say the image in the Now of recognizability bears the stamp of the critical, dangerous moment which underlies all reading."[28]

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6) and that "the reader had to supply the missing half of the picture" (p. 292). What *kind* of reading, however, is the question. Certainly not the kind that attempts to appropriate the past for present purposes: "Just as a man lying sick with fever melts all the words he hears into the phantasmagoric images of his delirium, so today's '*Zeitgeist*' appropriates the documents of past and distant worlds in order to take possession of them and incorporate them indifferently (*lieblos!*) into its self-absorbed phantasies" (G. S. I, 1, p. 234).

24. GS, V, 1, p. 963.

25. For an interesting reading of "chance" in the *Arcades-Project*, see Heiner Weidmann, "Geistesgegenwart. Das Spiel in Walter Benjamins Passagenarbeit" in *Modern Language Notes*, Vol.107, No. 3, (April 1992), p. 521-47.

26. GS, V, 1, p. 963.

27. GS, V, 1, p. 578.

28. GS, V, 1, p. 578, emphasis added.

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If "we are after the *traces* of things" and of things which, like the Arcades, perhaps never were what they are in Benjamin's representation, then neither the trace nor its origin and significance can be so easily determined. In this context it is helpful to recall Benjamin's discussion of memory in "On Some Motifs in Baudelaire." In that essay the trace figures as the exact opposite of memory. Where memory and trace exclude each other, what has left a trace is not just forgotten but, strictly speaking, *it is not*. The predetermined answers Buck-Morss gives as to what and who has left traces are not Benjamin's. For him the Arcades are traces of . . . nothing; for the Arcades were nothing close to what they are said to be. They are not traces of something; they are nothing but traces. What we could find in Benjamin's *Arcades-Project* are perhaps traces of a reading, or traces of what, in every reading, never happened, cannot be remembered or anticipated or forgotten. If one were to trace those kinds of traces in Benjamin, then a surprising possibility arises: perhaps the *Arcades-Project* is not so much a gigantic act of memory as the redemption of the past for the sake of making past dreams come true in the present,[29] but it is also a non-psychological theory of forgetting: a forgetting that is not repression nor memory-loss but concerns the irretrievable forgetting which can never be remembered because all memory depends on it. Buck-Morss links the messianic Now-Time with the now of the present by way of political action. But that Now which can uproot every continuum and which makes reading such a dangerous activity could be something else. It could be forgetting.[30] This forgetting is revolutionary because, as the most critical threat to all sequences (which it disrupts) and all systems (which it corrupts), it is the chance that keeps open another future. Perhaps Benjamin's most overt concession to this revolutionary forgetting is the incompleteness of the *Arcades-Project*. That concession, however, cannot be attributed to the author Benjamin as "autonomous agent." It is a concession on the part of his texts and their readability now. They provoke and resist any completion of their incompleteness. Great works, said Valéry, are never finished, just abandoned: in other words, forgotten.

Eva Geulen

29. Perhaps the deepest rift within the *Dialectics of Seeing* is its author's indecisiveness concerning the historical position of Benjamin's *Arcades-Project*. She is tempted to claim its continued validity, but her own chronological account compells her to concede that its moment passed with the triumph of fascism. Yet that very tension which already inhabits the *Arcades-Project* is what could be most fruitful today.

30. On the relation of "now" and "forgetting," see Werner Hamacher, "The Word *Wolke* — If it is One," in Rainer Nägele ed., *Benjamin's Ground*, *op. cit.*, pp. 147-75.

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Benjamin and the Architecture of History

Susan Buck-Morss, *The Dialectics of Seeing: Walter Benjamin and the Arcades Project* (Cambridge: MIT Press, 1989).
Pierre Missac, *Walter Benjamins Passage*, trans. by Ulrike Bischoff (Frankfurt a/M: Suhrkamp Verlag, 1991).
Ralf Konersmann, *Erstarrte Unruhe: Walter Benjamins Begriff der Geschichte* (Frankfurt a/M: Fischer Taschenbuch Verlag, 1991).

In a letter to Gershom Scholem dated January 30th, 1928, Walter Benjamin notes that his study of the Parisian arcades, begun the previous Spring with his colleague Franz Hessel, would be "the work of at least a few weeks"[1] This proved to be an understatement: Benjamin was still engaged in the project in 1940 when he died. During those twelve years the work had undergone the most radical metamorphosis. From a short sketch of the then fading and ramshackle Parisian arcades, the fashionable shopping palaces built of iron and glass in the early 19th century, the *Passagenarbeit* had been transformed into a vast critical study of the culture and origins of modern capitalism. Benjamin assembled over a thousand pages of notes, drafts, and quotations (organized into separate folders or *Konvoluts* designated by a letter and a subject heading) which were to present a panoramic vision of Parisian life and provide the physiognomy of an epoch. The project sought to juxtapose the most heterogeneous and incongruous concepts: myth and modernity, prehistory and progress, the fashionable and the obsolete, arcadian fantasies and architectural monstrosities, railway stations and revolutions, poetry and prostitution; Paris as Heaven and Paris as Hell. Benjamin devised and refined a series of innovative approaches to unmask the forms of mythic domination pervading the modern era and thereby to bring about a revolutionary awakening from the historical slumbers of capitalism.

Long thought lost, this pile of fragments for Benjamin's unwritten *magnum opus* was eventually discovered hidden in the Bibliotheque Nationale in Paris where it had been deposited by George Bataille at Benjamin's request. Meticulously pieced together by Rolf Tiedemann, the material was first published in 1982 under the title *Das Passagen-Werk* (*The "Arcades Project"*) by Suhrkamp as the fifth volume of Walter Benjamin's *Gesammelte Schriften* (hereafter *GS*). In contrast to the excitement generated in Germany and France by this painstaking work of scholarly (re)construction, the Anglo-American academic response has been disappointing. Only one of the *Konvoluts* (albeit the central methodological one) has

1. Walter Benjamin, *Gesammelte Schriften*, edited by Rolf Tiedemann, Vol. V (Frankfurt a/M: Suhrkamp Verlag, 1982), p. 1083.

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been translated into English[2] and analysis has been largely confined to a couple of "special editions" and the occasional journal article.[3]

Buck-Morss has written extensively on Benjamin.[4] Her study constitutes the first systematic examination of the *Passagenarbeit* in English and thus contributes to the rectification of this neglect. The book is divided into three sections. The first is concerned with sketching the context and sources of Benjamin's work on Paris, its spatial and temporal origins. Buck-Morss identifies the "Arcades Project" as intimately related to his earliest writings on the themes of the city and urban experience, i.e., his pen-pictures of Naples (1924) and Moscow (1927). The second section seeks to identify some of the central categories of the *Passagenarbeit* with particular reference to his interest in the relation between technological innovation and nature, the rise of commodity production and fetishism, material culture and revolution. The final part of the book deals with his contribution to a materialist historiography and pedagogy, and focuses on the relevance of the *Passagenarbeit*, the writing of history as political intervention.

She points out that the examination of an unfinished book is an "unorthodox undertaking," warranting an innovative approach: the production of a "picture-book of philosophy" (ix). With its carefully juxtaposed photographs and drawings the work is not merely an analysis but also an attempt to develop exactly that preoccupation with images she considers central to Benjamin's enterprise. Her study, however, is concerned less with presenting insights into Benjamin's work, than with its systematic plotting. Above all, she attempts to order the *Passagen-Werk*. She writes: "a pattern of co-ordinates functions as the invisible structure of the *Passagen-Werk*'s historical research, enabling the projects seemingly disparate, conceptual elements to cohere" (210). Therefore, this study constitutes not so much a "picture-book" as an act of "philosophical mapping." Two examples illustrate the limitations of this.

In her attempt to determine the "spatial origins" of the "Arcades Project" Buck-Morss writes of Benjamin's various cityscapes: "to the West is Paris, the origin of bourgeois society in the political-revolutionary sense; to the East, Moscow

2. See "*Konvolut N*, Theoretics of Knowledge: Theory of Progress," in *The Philosophical Forum*, Vol. 15, Nos. 1-2 (Fall/Winter, 1983-4), pp. 1-40.

3. See *New German Critique* 39 (Fall 1986) and *The Philosophical Forum*, Vol. 15, Nos. 1-2 (Fall/Winter 1983-84). Otherwise, little attention has been paid to the "Arcades Project." Other journal articles include: Anne, Margaret and Patrice Higonnet, in *Critical Inquiry*, Vol. 10 (March 1984), pp. 391-419; Louise Hoffman, in *Washington State University Research Studies*, Vol. 52, Nos. 3/4 (1983), pp. 146-55; John McCole, in *Theory and Society* 14 (1985), pp. 497-509; and James Rollerston, in *Publications of the Modern Language Association of America*, Vol. 104, No. 1 (January 1989), pp. 13-25. The third section of David Frisby's *Fragments of Modernity: Theories of Modernity in the Work of Simmel, Kracauer and Benjamin* (Cambridge: MIT Press, 1988) is devoted to the examination of the "Arcades" material.

4. Her other studies include: *The Origin of Negative Dialectics. Theodor Adorno, Walter Benjamin and the Frankfurt Institute* (Hassocks, Sussex: Harvester Press, 1977); "Benjamin's *Passagenwerk*: Redeeming Mass Culture for the Revolution," *New German Critique* 29 (Spring/Summer 1983), pp. 211-40); and "The Flaneur, the Sandwichman and the Whore: The Politics of Loitering" *New German Critique* 39 (Fall 1986), pp. 99-140.

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in the same sense marks its end. To the South, Naples locates the Mediterranean origins, the myth-enshrouded childhood of Western civilization; to the North, Berlin locates the myth-enshrouded childhood of the author himself" (26). She apparently wishes to establish a series of connections between Benjamin's various cityscapes based on the development of Western society. Such a formulation is implausible and does not withstand serious scrutiny. Thus, Benjamin's essay on Naples sketches contemporary modes of experience. It contains no speculations on antiquity but seeks the most concrete depiction (and the goal is "depiction" rather than "description") of city life. Indeed the Pompei ruins are mentioned only with regard to the swindles perpetrated on unfortunate tourists who come to visit them. Benjamin's cityscapes reveal the character of the contemporary metropolitan environment and of patterns of mundane urban experience. They do not propose any grandiose notion of the "myth-enshrouded childhood of Western civilization." In this attempt to chart the origins of the *Passagenarbeit*, Buck-Morss imposes a grand formal scheme that tends to obscure the simpler and subtler relations between Benjamin's writings on urban life.

In the second section of the book, Buck-Morss continues to "plot" the *Passagenarbeit*. With "petrified nature"-"transitory nature" as the horizontal axis, and "waking"-"dream" as the vertical one (and with "commodity" designated as their null point), she analyses the main concepts of the *Passagenarbeit* under the rubrics: "Natural History," "Mythic History," "Mythic Nature" and "Historical Nature." These are superimposed on the graph ["display D," 211] and combine to form a diagrammatic representation of what she regards as the key themes of Benjamin's Paris writings. She is so bold as to state: "display D represents this invisible, inner structure of the *Passagen-Werk*" (211). This astonishing claim is subsequently toned down: "there is no reason to claim for the system of co-ordinates in display D anything more than the heuristic value which first prompted its construction, that is, that it makes coherent in one perceptual grasp the whole span of the 'Passagen' material assembled between 1927 and 1940 and the fact that Benjamin himself encouraged the discovery of such 'systematic tendencies' even when not explicitly stated by the author — at least, so it seemed to this author when she adopted it as a conceptual frame"[5] (213).

These examples of "co-ordination" illustrate the central problems. The first is that the status of study is often unclear. There is a distinction between the

5. The fundamental paradox is this: While she applauds Benjamin's break with traditional scholastic principles, presents him as a textual pioneer and claims equal status for her own "unorthodox undertaking," her methodological impulse, the desire for co-ordination, is derived from Benjamin's most scholarly and conventional study: his 1918-19 doctoral dissertation ("The Concept of Art Criticism in the German Romantic" (*GS*, Vol. I, Book 1, p. 41). She draws a fundamental (and questionable) distinction between Benjamin's early writings — particularly his *Habilitationsschrift* ("The Origin of German Tragic Drama," 1923-25) — where one is "threatened with claustrophobia" (17), and his later more political and experimental studies, such as *One-Way Street* (1923-26), yet justifies her mapping with reference to Benjamin's most self-consciously academic text. She shuns what she appreciates and appropriates what she disdains.

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discovery of the "hidden structure" of the *Passagen-Werk* and the development of a conceptual framework (a "heuristic" device). In short, does the ordering of the *Passagenarbeit* come from within or without? The answer is "both." Buck-Morss sees her work in a "constellation" with Benjamin's, i.e., she wishes to facilitate the unfolding of the immanent structures of the Paris writings *and* to impose an analytical frame in order to appropriate the writings for the present. Both attempts are flawed. While recognizing that the *Passagenarbeit* was composed over 13 years, she seems to neglect the crucial point that the project underwent the most profound transformations during this time. If Buck-Morss presents the "inner structure" of the *Passagen-Werk*, to what point in the history of its composition this is supposed to apply? She neglects the ever-changing visage of the work, fails to take account of its fluidity, its shifting character and offers instead the determination of the indeterminate, the definition of the indefinite.

This tendency is exacerbated by another. The emphasis on systematization tends to rob Benjamin's work of its paradoxes and subtleties. In her attempt to render the whole in "one perceptual grasp" Buck-Morss over-emphasizes Benjamin's use of Marxist categories. While recognizing that Benjamin "strained the traditional conceptions of both history and philosophy to the breaking point" (217) she still writes of Benjamin's intricate critique of the notion of history-as-progress: "in quite conventional neo-Marxist terms, he claims that the concept of progress forfeited its critical power when the 'bourgeoisie conquered its power positions in the nineteenth century' " (80). She correctly stresses the importance of childhood and the child's imagination but then states: "what Benjamin found in the child's consciousness . . . was precisely the unsevered connection between perception and action that distinguished revolutionary consciousness in adults" (263). This fails to do justice to Benjamin's appreciation of the intuitive and playful relations children create with their environment. His understanding of the complex links between mimesis, play and language is ignored in favor of a blunt equation with political practice. Such a rigid framework is too crude to capture the fluctuating and intricate patterns of Benjamin's work. It is not subtle interpretation that Buck-Morss provides but materialist "refunctioning." One is entitled to ask: what is the purpose of this imposition, this Brechtian *plumpes Denken* (which, to her credit, Buck-Morss recognizes)?[6] For Benjamin, the desire for completion was always secondary to a profound contentment with the fluid, the ephemeral and the transient. He writes: "to great writers, finished works weigh lighter than those fragments on which they work throughout their lives. For only the more feeble-minded and distracted take a pleasure in conclusions, feeling themselves thereby given back to life. For the genius each caesura, and the heavy blows of fate, fall like gentle sleep itself into his workshop labor. And about it he draws a charmed circle of fragments"[7]

Buck-Morss offers a vision of the *Passagen-Werk* shorn of its incongruities, of its riddles, nuances and inconsistencies. Benjamin's micrological imagination is

6. See her footnote 186 (pp. 451-2).
7. *One-Way Street and Other Writings* (London: Verso, 1985), pp. 47-8.

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subject to Buck-Morss' totalizing, organizing, disciplining construction. Why would anyone wish a view that "makes coherent in one single perceptual grasp the whole span of the 'Passagen' material" (213), for what solitary gesture can do justice to such heterogeneous material, to such sensitivity and multiplicity of insight, to the abiding concern for detail and precision? Such an approach is in direct contradiction to the subtleties of Benjamin's own "dialectics of seeing." The *Passagenarbeit* is transformed from "a charmed circle of fragments," an illusive mosaic, into a Marxist "monolith." Her study "has the effect of sealing the reader within the text . . . it creates its own windowless world" (17).

In 1937 Pierre Missac met Benjamin through Bataille. He was to become one of the most perceptive commentators on Benjamin's work. His stimulating study, *Passage de Walter Benjamin* (first published in 1987), has recently been translated into German. The title may be deceptive for it plays on two meanings of the word "passage": "street"/"arcade," the object of Benjamin's Paris writings, and "passage"/"passing," movement in space and time. It is this latter sense, that of motion and of transience, which is foremost in this study. Missac does not therefore present a direct analysis of the *Passagenarbeit* itself. In fact, he does not provide a direct examination of anything, for Missac's concern is with "indirect critique." The model for such an approach is perhaps found in a poem that fascinated Benjamin and stood at the heart of his writings on Charles Baudelaire, i.e., "A une passante" ("To a Passer-by"). Just as one fleetingly distinguishes and ascertains the features of a passer-by in the street before he/she vanishes from sight, so Missac seeks to offer the reader glances into Benjamin's texts *en passant*.

Missac's initial concern is physiognomic. In the section entitled "*Homo Scriptor*," he seeks to present a series of sketches of Benjamin's character and preoccupations: "Collecting," "Reading," "Writing" and "Gambling"/"Playing." This is not altogether successful and it may be the weakest part of the book. Thus, while Missac correctly notes that Benjamin and Mallarmé shared a concern with a pure or poetic form of language, he stretches the link between them almost to absurdity: "their affinity manifests itself in a mode of life in which personal difficulties (a difficult relation to the body, breathing problems, depressive crises) went hand-in-hand with a particular social manner (studied politeness, the quest for protection, intensive correspondence) and the specific attitude of the writer (in contrast to light and brilliant verbal expression, frequent arbitrary information, difficulties in writing). A comparison of their handwriting would clearly bring such ambiguities to light" (42).

Missac's discussion of Benjamin's historiographic and literary precepts fortunately omits similar speculative fancies[8] and accordingly contains his most incisive observations. He examines Benjamin's attempt to elucidate a critical historical method with specific reference to the notions of the "dialectical image" and of the "dialectic-at-a-standstill." Missac identifies the hallmark of Benjamin's

8. Buck-Morss is not averse to making peculiar comments regarding Benjamin's personality. She asks the extraordinary question: "why was there not more of Jack Reed in this man's character; why could he not commit himself in love and in politics?"! (32).

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historiographic principles as the "gesture of Joshua." Benjamin seeks to interrupt the catastrophic course of historical events, to bring to a temporary halt the unceasing repetition of human suffering. Such a suspension of historical time is meant to permit the recognition and liberation of the forgotten utopian impulses lodged in the past. The dialectic-at-a-standstill is both an act of remembrance and redemption. It is here that the relation between Missac's and Buck-Morss' study is most evident. Although Missac does not offer a brusque confrontation with Benjamin's texts and explicitly eschews the "tête-à-tête, eyeball to eyeball" (26) version of literary criticism, there is a fundamental methodological similarity beneath the antinomies of style. The goal of both is to bring about recognition through interception, to exemplify Benjamin's own historiographic theses. Both heed Benjamin's warning in his famous 1940 "Theses on the Concept of History": "the true image of the past flits by"[9] and hence attempt to arrest such an image of Benjamin: Missac seeks to stop it momentarily as it brushes past, to make it linger. To recognize the fleeting, to embrace it warmly, these are his goals. Buck-Morss also arrests an image of Benjamin in a rather different sense: she grasps and handcuffs it, takes it securely into custody. She presents Benjamin's work not so much "frozen" in the moment of recognition but as "petrified" in the aftermath of construction. Missac offers a delicate, appropriate critique. Buck Morss asserts a robust, appropriating one.

There are, however, similar intentions: Missac is also preoccupied with the "inner structure" of Benjamin's writings and the juxtapositioning of quotations, aphorisms and other fragments in a form of literary montage. Both Buck-Morss and Missac share an "architectural" interest. Her approach most resembles iron construction, bolting tiny pieces together to form a giant edifice. Although she notes that "the atmosphere of *One-Way Street* has all the light, air and permeability of the new architecture of Gropius or Corbusier" (17), it is actually Missac for whom glass architecture acts as metaphor and method. Buildings of glass transform the perceptual realm of the city-dweller. They bring with them new forms of illumination, transparency, mirror-like reflections, fragility. These correspond to Benjamin's literary method. For him, the task of the critic is to permit the object to reveal itself, to make itself visible. He allows light to fall on concealed and forgotten things. In the glass fragment the totality is reflected. It is as this monadological form that each shard of the past, broken but with a new resilience — a resilience actually born of fragmentation — survives to be redeemed.

Missac's own act of critical illumination, observation and insight, mirrors such an approach. His critique-in-passing thus offers another, more subtle, "dialectics of seeing." Yet there is a flaw here also. In its emphasis on the formal and methodological features of Benjamin's texts, Missac's study tends to overlook the thematic content. Benjamin's monadological approach is inextricably linked to his concern with the allegorical perception of historical suffering and

9. *Illuminations* (London: Fontana, 1973), p. 257.

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the act of critical redemption. The unfinished, the open-ended are not only the main features of Benjamin's writings, but also the fundamental characteristics of their object: human history. The dialectical relation between the mode and the object of representation is central. To use one of Benjamin's favorite images from the *Passagenarbeit*, form and content are like two opposing mirrors endlessly reflecting each other. Missac fails to capture this interplay. His preoccupation with the architecture of Benjamin's texts ends up generating a hollow structure — a building as empty as the abandoned arcades themselves.

Ralf Konersmann's detailed, but at times repetitive[10] exposition of the "Theses on the Concept of History" exhibits a similar reluctance to relate Benjamin's methodological and thematic concerns. Konersmann's study provides a close and systematic reading of the "Theses" which succinctly sketches the background and context of many of Benjamin's observations and thus locates Benjamin's historiographic principles within the wider tradition of the philosophy of history. The "Theses" seek to articulate a new concept of historical materialism through the critical reception not only of idealism and historicism, but also of Marxism itself. Konersmann seeks to show not only how Benjamin sought to locate his views in opposition to these theoretical positions but also how he sometimes failed to do justice to them. Benjamin's reading and knowledge of these traditions was neither exhaustive nor unproblematic,[11] and Konersmann carefully points to the limitations of his approach.

The most successful sections of the book are those which go beyond exposition and analyze such shortcomings. In the discussion of Benjamin's critique of historicism, Konersmann identifies three central elements: the rejection of universal history (human history as a unity), of narration (history as process and progress), and of historical empathy. In the sixth thesis Benjamin writes: "to articulate past history does not mean to recognize it 'the way it really was' (Ranke). It means to seize hold of a memory as it flashes up at a moment of danger."[12] For him history is not the uncovering of the dead past, but an act of construction at the conjunction of what was and what is. The "then and there" and "here and now" intersect. Past and present form a constellation in which the latter recognizes and redeems the former. Where historicism presents only an "eternal image of the past, historical materialism supplies a unique experience of the past."[13] Benjamin's reference to Leopold von Ranke is significant because, as Konersmann shows, Ranke's concept of history is very different from that of the historicist school to which he is relegated. Benjamin's equation is somewhat inappropriate and hence his criticism misdirected. Konersmann indicates not

10. For example, on p. 35 Konersmann notes that for Benjamin the present "is neither, in Hegel's sense, reasoned, nor, in Marx' sense, the point of departure and terminus of a critical analysis which contributes to it overcoming itself." This statement is repeated word for word on p. 64. Editorial errors can be instructive.

11. Unlike Buck-Morss, Konersmann recognizes and examines the tortuous relation between Benjamin's own concepts and those of the historical materialist tradition.

12. *Illuminations*, *op. cit.*, p. 257.

13. *Ibid.*, p. 264.

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only Ranke's own rejection of notions of universal history and progress, but also the points of convergence between their formulations: for example, their shared concern with history as imagistic, and an emphasis on the fragment. The most important of these unexpected parallels, however, is the relation between profane history and God. Konersmann cites Ranke thus: "I maintain that each epoch is immediate to God and its value consists not in what proceeds from it, but in its own existence, in its own right" (pp. 95-96). He then observes with regard to Benjamin's "Theses": "if each second, as it states in those fragments, can be the small portal through which the Messiah enters — is it not then exactly, in Ranke's terms, immediate to God? Does not the historical materialist also think in pictures? Does he/she not also, like Ranke, in the last instance seek to decipher history as a Divine hieroglyph?" (101).

Konersmann's re-evaluation of Benjamin's misplaced critique is lucid and informative. The book, however, has two main shortcomings: first, the "Theses" appear to exist within a vacuum; and, secondly, they seem hollow. Preoccupied with defining Benjamin's position *vis-à-vis* the great 19th century historical systems of thought, Konersmann overlooks the role of the "Theses" in Benjamin's own work. While one is loath to criticize books for things they do not discuss, the study *does* claim in its title to be an analysis of Benjamin's theory of history, and not merely a discussion of the 1940 "Theses." Konersmann rarely ventures beyond the latter. He links Benjamin to other philosophers of history, but does not develop the connections with Benjamin's other writings and, indeed, even his other historiographic reflections. There is no mention of the fact that Benjamin's critique of progress is first expounded in his 1915 essay "On the Life of Students." Benjamin's mystical understanding of the post-Fall, historical condition of human beings in his 1916 ("On Language as Such and on Human Language") and 1921 ("The Task of the Translator") writings on language is not examined. The strangest omission is perhaps that of the "Theologico-Political Fragment" (1920-21), in which Benjamin explicitly articulates a Messianic concept of history. As a result, Konersmann fails to deal with some of the central categories of Benjamin's thought: the relation between history and myth, the concept of natural history, and the key notion of redemption. Although the importance of the image as such is stressed, the central historiographic principles of the dialectical image and of the dialectic-at-a-standstill are paid scant regard.

Furthermore, Benjamin's own attempt to *write* history is not considered. In his third Thesis Benjamin states: "a chronicler who recites events without distinguishing between major and minor ones acts in accordance with the following truth: nothing that has ever happened should be regarded as lost for history."[14] Konersmann comments: "the character of the chronicler thus described is not that of Benjamin" (52). Yet in 1932 Benjamin himself wrote a "Berlin Chronicle," a series of reminiscences of his childhood, as an experiment in writing history as an act of remembrance. The assemblage of mundane, obscure, and apparently

14. *Ibid.*, p. 256.

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trivial items in the *Passagenarbeit* clearly testifies to Benjamin's salvation of little things, of precisely such "minor events." While frequently mentioned, the *Passagenarbeit* material is never examined. This is an astonishing oversight when one considers firstly that the "Theses" were born within the "Arcades Project,"[15] and secondly that they were intended to stand as a prolegomena, as an epistemological preface to the Paris study. In the absence of both their content and context within Benjamin's *œuvre*, the "Theses" appear as a series of hollow, disconnected pronouncements. This is unfortunate because the "Theses" were not conceived as an abstract set of principles to be followed by other historians but, rather, as the guidelines for Benjamin's own practice as a writer of history. Hence one should not speak, as Konersmann repeatedly does, of "Benjamin's historian," but rather of Benjamin-as-historian. The "Theses" define Benjamin's attempt to excavate and remember, his political engagement as an archaeologist of the recent past. Benjamin's thought is located in the interplay of reading and writing history, of perceiving and transforming it, in a dialectic not just of seeing, but also of doing. To remember Benjamin as an architect of historiographic principles must not be to forget that he was also a builder, a historical engineer.

Graeme Gilloch

15. "*Konvolut N*" contains the central themes that were to be reformulated and refined in the "Theses," such as the notion of momentary recognition, critique of progress, and preoccupation with the image.

Three Biographical Studies of Walter Benjamin

Werner Fuld, *Walter Benjamin. Eine Biographie* (Reinbeck bei Hamburg: Rowohlt Taschenbuch Verlag, 1990). 316 pp.
Momme Brodersen, *Spinne im eigenen Netz. Walter Benjamin: Leben und Werk* (Buehl-Moos: Elster Verlag, 1990). 348 pp.
Hans Puttnies and Gary Smith eds., *Benjaminiana. Eine Biografische Recherche* (Giessen: Anabas Verlag, 1991), 219 pp.

Along with German re-unification, a much quieter and more subdued series of events took place in Berlin in 1990: those marking the fiftieth anniversary of the tragic death of one of the city's most intriguing intellectual sons: Walter Benjamin (1892-1940). A forgotten figure in the immediate post-war period, he

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is now recognised as one of the most gifted writers of his generation. 1990 saw the publication of two biographical studies and the preparation of a third.

The contours of Benjamin's life are relatively familiar. The eldest of three children in a prosperous, assimilated Jewish family, Benjamin was born, brought up, and educated in Berlin until he was sent to the progressive Haubinda school in Thuringia. His years there and at university in Freiburg and Berlin were dominated by the Youth Movement leader, Gustav Wyneken. Until 1914 Benjamin was a leading figure in the radical wing of the German Youth Movement. He regarded Wyneken's pro-war stance as a betrayal of the Movement's ideals and severed ties both with his former teacher and with the Movement. Avoiding military service, Benjamin married Dora Sophie Pollack in 1917 and moved to Switzerland. His interest in Judaism and the *Cabbala* was fuelled by his friendship with Scholem during this period, but their often planned emigration to Palestine was eventually undertaken only by Scholem. Benjamin's attempt to found an independent philosophical journal (*Angelus Novus*) failed and his subsequent hopes of an academic career within the German university system foundered. He was eventually asked to withdraw his *Habilitationsschrift* (the now famous *Ursprung des deutschen Trauerspiels*) in 1925 because his prospective examiners found the text incomprehensible. Benjamin was forced to eke out a meagre living writing reviews, essays and translations for journals and newspapers, and, in the early 1930s, made numerous broadcasts for Berlin and Frankfurt radio stations. In 1924 Benjamin met Asja Lacis on Capri and his problematic engagement with Marxism began. This was given added impetus in 1929 when he was introduced to Bertolt Brecht. The ensuing friendship, and Brecht's influence on Benjamin's ideas, persisted despite the efforts and dismay of Scholem and Theodor W. Adorno. After 1933 Benjamin lived in exile in Paris under desperate financial circumstances and dependent upon a stipend from the Institute for Social Research, itself in exile in New York. Despite these conditions he produced some of his best known works here including: "The Work of Art in the Age of Mechanical Reproduction" (1935), and studies connected with the *Passagenarbeit* (his vast and unfinished assemblage of fragments regarding nineteenth century Parisian culture), notably the essays on Charles Baudelaire ("Paris of the Second Empire in Baudelaire" [1938] rewritten as "On Some Motifs in Baudelaire" [1939]) and the famous "Theses on the Concept of History" (1940). Unable to escape occupied France, Benjamin committed suicide on the Franco-Spanish border in September 1940.

Benjamin is a particularly difficult subject for a biographer. This is not only because of the complexity of his ideas but also because of their diversity. Freed from the academic constraints and shackled by economic necessity, he was a philosopher, literary critic, translator, social theorist and journalistic *homme-des-lèttres*. An unlikely assortment of subjects held his attention, ranging from the *Cabbala* to turtle-walking in the Parisian arcades, from Marcel Proust to railway stations, from Baudelaire's poetry of to children's toys, and from Paul Klee's *Angelus Novus* to postage stamps. Elements were dragged from their intellectual

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moorings and juxtaposed to form illuminating and provocative images. He created a host of literary miniatures, a "charmed circle of fragments."[1]

Werner Fuld's book is a "reworked and expanded" version of his *Walter Benjamin. Zwischen den Stühlen. Eine Biographie*. (Hanser Verlag, Muenchen, 1979). No-one should be more surprised at the re-issue of this book than Fuld himself, for the first line of his original study reads: "there has been a Benjamin renaissance; it has been over for several years" (70). No-one, that is, except the numerous critics of the book, for it was not particularly well-received at the time, and this was not merely due to Fuld's lack of foresight regarding the prospects for Benjamin studies in the 1980s.[2] The original study was criticised for its one-dimensional characterization of a Benjamin desperately trying to reconcile his bourgeois intellectual status with his proletarian political beliefs — a man caught between the competing imperatives of autonomy and commitment. Dietzsch and Lüdke both criticize the book's superficiality. Fuld's notion of Benjamin "*zwischen den Stühlen*" was paradoxically crosscut by an attempt to play down Benjamin's later Marxist inclinations, which is the principal point of departure for Bollenbeck's shrill condemnation. The 1979 study ignored Benjamin's genuine interest in Marxism and the task of the intellectual. The "Work of Art" essay is unaccountably seen as mourning the end of "aura" and the bourgeois contemplation of art, and the 1934 piece "The Author as Producer" is largely ignored. Fuld thereby missed Benjamin's real dilemmas, i.e., the relations between intellectuals and revolutionary masses.

Fuld's book, however, was not without merit. It provided a concise account of Benjamin's life and a useful sketch of some of Benjamin's central texts. The new edition has been improved. Fuld has deleted the preliminary comments of the original version concerning the state of Benjamin scholarship and a series of criticisms and allegations of "textual manipulation" against the editors of Benjamin's writings, especially Scholem and Adorno.

Yet, it is not much of an improvement for, despite the book's claims, there appears to have been precious little reworking. The negative reception of the first edition has had no apparent impact. Although removed from the title, Benjamin merely remains "between the chairs." Much of his thought, in particular his interest in the forms of modernity and their representation, remains unexplored. Although there is a new epilogue, it is only four and a half pages long. Despite the publication of at least three volumes of new material in the *Gesammelte Schriften* and a decade of the most intense scholarly investigation of Benjamin's works, Fuld has hardly changed anything. Most damaging is his failure to

1. *One-Way Street* (Verso: London, 1985), p. 48. It was written in 1925-26.

2. See Georg Bollenbeck, "O, du armer Benjamin!" in *Kübiskern* (Munich, 1980), No. 1, pp.143-49; Stefan Dietzsch "Referatedienst zur Literaturwissenschaft," in *Berlin 13*, No. 1 (1981), pp. 21-24; and W. Martin Lüdke "Walter Benjamin — fast einen Kopf kuerzer" in *Merkur*, Vol. 33, No. 9 (1979), pp. 902-08. The critical comments of Dietzsch and Lüdke concerning the superficiality of Fuld's study are valid for the most part, but Bollenbeck's simplistic condemnation of the book serves only as Fuld's vindication.

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examine Benjamin's *Passagenarbeit*[3] and the related studies of Baudelaire. Fuld writes: "the *Passagen-Werk* was and remains a legend" (290). In 1979 such a statement may have been tolerable; in 1990 it is utter nonsense. He provides no analysis of the project that preoccupied Benjamin for the last fourteen years of his life, and this is simply unacceptable. In the *Passagenarbeit*, one of Benjamin's central categories is that of eternal recurrence. Fashion is nothing other than the always-the-same disguised as the ever-new. Fuld's "re-worked and expanded" new edition is unfortunately a rather good illustration of this formulation.

Drawing on anecdotal information, Fuld presents Benjamin as a figure out of step with his epoch, destined to endure disaster and hardship. He offers some obscure and occasionally ludicrous formulations such as: "Benjamin was no Berliner although he was born there on July 15th 1892 and, with interruptions, grew up there, and lived there intermittently until his exile" (7); and the absurd: "Benjamin had a thoroughly erotic relation to books" (19). It is precisely this romanticised representation of Benjamin's life as the sorrowful progression of a melancholic personality unable to sustain relations that Momme Brodersen seeks to shatter. The jacket notes state boldly: "for a long time preference has been given to the description of Walter Benjamin's (intellectual) biography as a tragic progression . . . only his end was really tragic: the suicide in 1940."

Apart from this refreshing intention, Brodersen's book has a number of positive features. The material is presented in an attractive format and the text is accompanied by a large number of photographs. With its emphasis on Benjamin's role as literary critic, the book deals with some of the more neglected facets of Benjamin's life. Brodersen chronicles Benjamin's formative experiences at the Haubinda school, his involvement in the Youth Movement, and the Free Student Union prior to his disenchantment with Wyneken, and the youthful poems and programmatic statements in *Der Anfang*. This is particularly valuable, for Benjamin's early idealist understanding of the redemptive task of youth is one dimension of his thought frequently ignored. Brodersen also devotes considerable attention to an interpretation of Benjamin's overlooked essay "Naples," taking the notion of "porosity" as a metaphor for "a whole program of an open form of philosophical thought" (159). This is one of the few sections where Brodersen actually analyzes one of Benjamin's texts. It is not original, but rather a re-statement of passages found in his earlier study, *Benjamin auf Italienisch: Aspekte einer Rezeption* (compare pp. 153-60 of the 1990 text with pp. 124-42 of the earlier, 1982 book).

This points to the central flaw. Whereas Fuld seeks to sketch the central themes of Benjamin's texts, Brodersen never really engages them. Apart from the piece on "Naples," there is no sustained examination of Benjamin's writings. "The Critique of Violence" (1921) is only mentioned in passing. Brodersen's meagre comments on "The Task of the Translator" erroneously describe it as representing "nothing other than a thinly veiled reception-theory" (125). He

3. Published in 1982 as Volume V of the *Gesammelte Schriften. Das Passagen-Werk*, ed. by Rolf Tiedemann and Hermann Schweppenhaeuser.

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thereby links this work to the later "Work of Art" essay and completely misses the vital connection between the notion of translation and Benjamin's theory of language. This oversight is symptomatic of Brodersen's failure to grasp the theological dimensions and Judaic themes of Benjamin's *oeuvre*. This absence does not stem from an emphasis on the more avowedly materialist works, for Brodersen's treatment of Benjamin's later writings in general is extremely disappointing. The "Work of Art" essay itself and "The Storyteller" (1936) are noted and forgotten. The *Passagenarbeit* is apparently as much a "legend" for Brodersen as it is for Fuld for its contents are inexcusably never divulged to the reader. Hence the title of the book is misleading for it is much more a simple biographical sketch than an *intellectual* biography. In short, there is ample "life" but precious little "work." The book is all "spider" and no "web."

The most substantial features of the Benjamin commemoration in Berlin were two major exhibitions (with accompanying lecture series). The first was staged by the Theodor W. Adorno Archive in conjunction with the Deutschen Literatur Archiv at the Schiller Nationalmuseum in Marbach (Aug. 28-Oct. 14 1989) and then at the Berlin Literaturhaus (Oct. 21-Dec. 9 1989). This exhibition chronicled Benjamin's development through a stimulating collection of photographs, manuscripts, and rare editions. Archival materials formed only part of the second exhibition. Entitled *The Little Hunchback and the Angel of History: Walter Benjamin, Theoretician of the Modern*, this presentation was organized by the Werkbund-Archiv at the Martin Gropius Bau (Dec. 28 1990-Apr. 28 1991). The exhibition eschewed more orthodox modes of presentation and sought to give innovative, sometimes cryptic, expression to a number of Benjamin's themes. One room contained mannequins representing the 19th century ragpicker and the dreaming bourgeois (with an accompanying slide presentation). Another was the setting for a mock shop-front containing turn-of-the-century fashions and two television monitors, one showing Charlie Chaplin's comic adventures in a department store, and the other an early piece of surrealist cinematography.

Benjaminiana — Eine Biografische Recherche appeared in early 1991 in conjunction with the Werkbund display. Like the exhibition, this study chooses an experimental form. In pursuit of Benjamin's own textual imperatives, Puttnies and Smith's book is not a biography in the usual sense. In "The Author as Producer" Benjamin states: "we must rethink the notions of literary forms or genres if we are to find forms appropriate to the literary energy of our time."[4] Fuld and Brodersen's linear narrative style of conventional biography is resisted. The authors/editors (their status is intentionally unclear) present a mosaic of selected (many previously unpublished) letters, reminiscences, diary entries, and other assorted documents, principally from Benjamin's friends, colleagues and acquaintances.[5] It is not so much a biographical study as a "scrap-book" yielding a series of insights into Benjamin's life and work: this is Benjamin seen from a

4. In *Understanding Brecht* (Verso, London, 1983).

5. They resemble Benjamin's *Deutsche Menschen* (1936). In this volume Benjamin collected and edited a series of letters from 1783 to 1883. Among these documents

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variety of competing and far from impartial or disinterested vantage points.

The material is not intended to fit into one smooth, simple image. A series of images is generated where these diverse perspectives intersect. Benjamin's life is given form within this constellation of marginalia. The study is a bold and stimulating experiment which seeks to capture the spectrum of Benjamin's life and thought through the kaleidoscopic. On the whole, it succeeds. It is a delicate structure, thought, which at times threatens to break-up into incoherent gossip.

There is, however, a problematic aspect: on the jacket Puttnies and Smith state: "let us be honest: our admiration for Benjamin always has in addition its private, almost kitschy side." A distinction has to be made between recognising such inclinations and pandering to them. The reader may not find this sufficiently clear. The book's self-description as "a scrap-book, formed as a textbook for a new generation"[6] does make it seem more like a cross between *Star Trek* and Pepsi Cola than a scholarly publication. The kitschy side is overemphasized. Substantial sections of the book are devoted to petty squabbles, malicious gossip and back-biting of friends, partners and others: in particular, Werner Kraft's complaints about Benjamin's essay on Carl Gustav Jochmann; some scathing descriptions of Dora Sophie Kellner, and her bitter correspondence with Scholem concerning Benjamin's divorce. The relevance of some of these items is not clear. Thus one wonders about the relevance of the long extracts from the Benjamins' 1930 divorce decree (157-63). In the case of Puttnies and Smith the issue is a pragmatic one: in a study of just over two hundred pages (many of which are photographs and illustrations) should such kitsch occupy so much space? Whilst it is clear that Puttnies and Smith's work seeks to counter the romanticized view of Benjamin as the melancholic, misunderstood genius — and at times they do succeed in dissolving such sentimentality with humorous comments and amusing juxtapositions of text and image[7] — this negation of kitsch through kitsch is a precarious undertaking. The growing interest in Benjamin over the last few years is valuable, exciting and long overdue. One can only hope that 1992, the centenary of his birth, does not turn out to be a year of unbridled Benjamin kitsch, that the stimulating material assembled by Puttnies and Smith does not lapse into squalid Benjamania.

Graeme Gilloch

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were letters by Georg Christoph Lichtenberg, Friedrich Hölderlin, Wilhelm Grimm, Johann Wolfgang Goethe, Georg Buechner and Gottfried Keller. The whole was intended as a mosaic of the tradition of German bourgeois humanism and enlightenment — a tradition which the Germany of 1936 had apparently forgotten.

6. It is also a puzzling formulation for the book does assume considerable knowledge of Benjamin's life and work. Although Puttnies and Smith contextualize the selected materials, the "glue" connecting them must be provided by the reader.

7. The most amusing part of the book, however, is unintentional. On p. 131 a photograph of Werner Kraft is given the wrong caption and described as a picture of "Dora Kellner, Benjamin's later wife"!

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The Long Havel Summer

Vaclav Havel, *Summer Meditations*, trans. by Paul Wilson (New York: Knopf, 1992), XVIII + 151pp.

As the short history of the democratic Czech and Slovak federal republic ends by giving birth to unidentical Czech and Slovak twins, the first book written while in office (in July August 1991) by its first and last president is now available in English.

Havel's ascent to Czechoslovakia's presidency in December 1989, following the Velvet Revolution, is the stuff of which fairy tales are made. After two decades of struggle for human rights, the dissident-intellectual became a philosopher-king, moved from the Ruzyne prison to Hradcany castle, and surrounded himself in his Camelot with a roundtable of dissident-knights acting as ministers and officials. In the immediate aftermath of his victory, a triumphant Havel addressed a joint session of congress declaring his "one great certainty: Consciousness precedes Being, and not the other way around, as the Marxists claim."[1] After a year and a half in office, Havel has to concede that: "In a way, what Marxists understand as social being really does determine social consciousness. In another way, however (and this is far more decisive) it is social consciousness that determines social being. Even Communism had to be thought up first; only afterwards could it be brought into existence" (115). As long as Havel was fighting the communist authorities, it was easy to reject the precedence of being by simply holding fast to his philosophy. His experience as president may have shown him that the Hegelian precedence of consciousness is just as simplistic and false as the Marxist alternative.

In *Summer Meditations* Havel claims that: "There may be some who won't believe me, but in my second term as president in a land full of problems that presidents in stable countries never even dream of, I can safely say that I have not been compelled to recant anything of what I wrote earlier, or change my mind about anything. It may seem incredible, but it is so: not only have I not had to change my mind, but my opinions have been confirmed" (10). Havel's false consciousness notwithstanding, the constant confrontation between his consciousness and Czechoslovak social being led him to moderate, adapt, and change his earlier ideas. Before the Velvet Revolution, he hoped that "an existential revolution" would end the technological era and lead to a new way

1. Vaclav Havel, "Help the Soviet Union on its Road to Democracy: Consciousness Precedes Being (Delivered to the Joint Session of Congress, Washington DC, February 21, 1990)," *Vital Speeches of the Day* (March 15, 1990), p. 330.

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of thinking, a new way for humanity to perceive itself and the world. He concluded with Heidegger that we can only prepare expectations for that revolution.[2] In Havel's current characterization there is only a very mild vestige of the Heideggerian anti-modernist and anti-technological rhetoric: "All my observations . . . have convinced me that, if today's planetary civilization has any hope of survival, that hope lies chiefly in what we understand as the human spirit. If we don't wish to destroy ourselves in national, religious, or political discord; if we don't wish to find our world with twice its current population, half of it dying of hunger; . . . if, in short, we don't wish any of this to happen, then we must — as humanity, as people with a sense of responsibility — somehow come to our senses. I once called this . . . an existential revolution." (115-16). Although the ecological and political problems remain the same, Havel's 1991 version of the existential revolution surprisingly includes *human reason*. As a Heideggerian dissident, he blamed all evils on human rationality, science and objectivity.[3] Now he has abandoned his earlier Heideggerian position that science is a demonic power preventing us from realizing our authentic nature, destroying the natural world and occluding truth, and appears to hold a far more reasonable Husserlian position: "It is, of course, impossible to avoid projecting scientific knowledge into specific decisions, including decisions of the economic variety. Yet two things must always be kept in mind. In the first place, scientific knowledge can serve life, but life is certainly not here merely to confirm someone's scientific discoveries and thus serve science. And in the second place, science may be a remarkable product and instrument of the human spirit, but it is not in itself a guarantee of humane outcome. A familiar example: science can lead people to discover atomic energy; but it cannot guarantee that they will not blow each other up. "Clearly, nothing can get along without the participation of powers as unscientific as healthy common sense and the human conscience" (67).

The question for *President* Havel was how can he use his political position to bring about this "coming to our senses?" During the first phase of his presidency, from December 29, 1989 to June 5, 1990, Havel described himself in Heideggerian terms as being "pulled forward by Being" (xvi), or in Hegelian terms, as becoming "an instrument of the time. . . . There was no choice. History . . . forged ahead and through me guiding my activities" (p. xvii). By his

2. Vaclav Havel, "The Power of the Powerless," in *Open Letters: Selected Writings 1965-1990*, trans. by Paul Wilson, (New York: Vintage Books, 1992), pp. 206-07. See also Aviezer Tucker, "Vaclav Havel's Heideggerianism," in *Telos* 85 (Fall 1990), pp. 63-78.

3. See Vaclav Havel, "Politics and Conscience," trans. by Erazim Kohak and Roger Scruton, in *Open Letters: Selected Writings 1965-1990*, *op. cit.*, pp. 249-71. Havel's Heideggerian positions about rationality, technology and science were influenced by those of his teacher and author of Charter 77, Jan Patocka. See his "The Dangers of Technicization in Science according to E. Husserl and the Essence of Technology as Danger according to M. Heidegger" (Varna Lecture, 1973) in Erazim Kohak, *Jan Patocka: Philosophy and Selected Writings* (Chicago: Chicago University Press, 1989), pp. 327-39.

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second term he already forged a metaphysical concept of the presidency: Genuine politics are guided by higher responsibility to " 'the memory of Being' — an integral aspect of the secret order of the cosmos, of nature, and of life, which believers call God and to whose judgement everything is subject" (6). This responsibility should lead Havel himself to be virtuous, "decent, just, tolerant, and understanding, . . ." and to hold fast to his convictions, even if they are tactically inappropriate. Havel resists the justification of means by ends (9-8). Practically, he strives to be the "conscience" of his nation, and repeatedly exhorts his fellow citizens to behave morally. In political decisions, he promises to listen to his conscience's dictates and to create "a moral state" (9-10). Yet, in two clear choices between political expediency and morality, lustration and arms sales, Havel chose political expediency. He objected to lustration, the public exposure and exclusion from high offices of citizens mentioned in communist files as collaborators. Despite his recognition of a moral evil in lustration, the assumption of collective guilt and the lack of due process of law, and despite his own Heideggerian analysis of the loss of individuality and responsibility under totalitarianism,[4] when it came to signing the lustration bill, President Havel, unlike Dubcek, the speaker of Parliament, did sign. In a speech at New York University during his last visit to the US, Havel attempted to excuse his behavior by arguing that had he not signed the bill he would have thrown the nascent Czechoslovak democracy into a constitutional crisis. Still, this consequentialist reasoning contradicts his promise in *Summer Meditations* to let moral convictions direct political decisions.

Then, there is the arms sales issue. When he became President, Havel sought to stop the sale of arms to pariah states. Since, however, all weapon factories are located in otherwise economically backward and politically unstable Slovakia, he acquiesced to selling weapons for hard currency. The official excuse that the central government is unable to prevent these arms shipments is unconvincing. The location of the factories is known, and all the central government has to do is send some troops to close the production lines. In reality, Havel chose the decreased danger of Slovak secession from the federation to the human rights of the citizens of authoritarian regimes such as Burma, Syria, and Iran. To be sure, countries such as the US, Israel, Sweden, France, Italy etc. have sold weapons to these countries under less constraining domestic circumstances. But the leaders of these countries do not claim to be moral.

At the beginning of his presidency, Havel the dissident advocated "anti-political politics" — a politics that does not involve political parties, which he saw as bureaucratic, irresponsible, and corrupt as the Communist Party. Instead, he wanted unaffiliated individual candidates to run for Parliament on their personal integrity. In *Summer Meditations* "anti-political politics" are also redefined and lose their radical character: "The political parties occasionally accuse me of being against political parties. That of course is nonsense. . . .

4. See Vaclav Havel, "New Year's Address," in *Open Letters*, *op. cit.*, pp. 390-96.

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One of the most sophisticated kinds of association — and at the same time an integral part of modern democracy and an expression of its plurality of opinion — is association in political parties. It would be difficult to imagine a democratic society working without them. "So — obviously — I am not against political parties; if I were, I would be against democracy itself. I am simply against the dictatorship of partisanship. . . ." (53).[5] Instead of his earlier aversion to all political parties, Havel attempts to limit the officials' loyalty to the party at the expense of the public, by adopting a new electoral system. He prefers a majority electoral system (similar to the American one) to the current proportional representation system, according to which citizens vote for parties that are allocated parliamentary representation according to the *national* percentage of votes they receive. According to the majority system people would vote for a specific person, as in the US, rather than for a party list where, beyond the first names of the list, most candidates are unknowns. To prevent the exclusion of small parties, Havel suggests adapting the German electoral system, according to which two thirds of the parliament is elected as in a majority system, while the other third is elected proportionally (53-59). This "reinterpretation" of his "anti-political politics" is far more reasonable and realistic than the original position. Still, Havel has refused to join any political party. Consequently no one represents his positions in the four Czechoslovak parliaments (one Czech, one Slovak and two federal). This led to his relative political impotence. Without Havel, the Civic Movement (the political party closest to him and run by his dissident-friends) lost the June 6 elections.

Havel's views on economics have not changed much since his dissident days. He supports a mixed economy, privatization of state industry, along with massive state intervention to create an extensive welfare state. He answers accusations from the Czech right that he is a "crypto-socialist" by admitting that his heart is "left of center," but claiming that the old Left/Right distinctions have lost their meaning. He wants a conscience-driven free-market (one might say "capitalism with a human face"). Absolute *laissez faire* is just as utopian as the old communist ideology. Deploying a quasi-Husserlian argument, Havel says the free market can work only if it is directed by morality that provides it with a *telos*. In the chapter dealing with his vision for Czechoslovakia 10-15 years from now he goes beyond his welfare system vision into utopian daydreaming. "Every main street will have at least two bakeries, two sweet-shops, two pubs,

5. Yet he had claimed that "It would make more sense if, again, people rather than political parties were elected (that is, if people could be elected without party affiliation). Politicians would solicit the support of the electors as individuals in their own right, not merely as appendages to the megamachinery of parties or as party favorites. . . . Parties should not take direct part in elections, nor should they be allowed to give anyone, *a priori*, the crutches of power. In other words, they should not participate directly in power, since when they do they inevitably become bureaucratic, corrupt, and undemocratic." Vaclav Havel, *Disturbing the Peace: A Conversation with Karel Hvizdala*, trans. by Paul Wilson (New York: Knopf, 1990), pp. 16-17.

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and many other small shops, all privately owned and independent" (104). He wants Czechoslovakia to look like Switzerland or Holland, free of the terrible environmental disaster left by the communists. He also wants to see the restoration of the family farm, like in Denmark, instead of the current huge environmentally destructive collectives. Yet he does not address the problem of how a Czech family farm can survive in a free market environment, any better than a family farm in Iowa. One of the interesting phenomena in the former Soviet bloc is that the demise of communism has created more Swiss, Swedish, Danish, and Dutch patriots in Eastern Europe than in Switzerland, Sweden, Denmark, and the Netherlands combined. Yet neither Havel nor any of the other Swiss-Swedish "patriots" know how to make their countries into rich welfare states. A Czech joke says that the Czechs want to work like the Russians, consume like the Germans, and be taken care of like the Swedes.

Following Husserl and his own teacher, Jan Patocka, Havel is a strong supporter of a politically unified Europe, based on a spiritual *telos*.[6] European unity should be based on shared European values such as political and economic pluralism, parliamentary democracy, respect for civil rights and freedoms, and administrative decentralization. Such a unified European world should include North America and the former Soviet Union. But while Havel shares the unifying aspirations of Western Europe, his Slovak backyard shares the nationalist-separatist trends of Eastern Europe. One of his policy goals was the preservation of the 74 years old Czech-Slovak federation, which has led Meciar, the Slovaks' elected leader, to veto Havel's candidacy for the presidency.[7] Before the June 6 elections Havel sought a philosophical formula to legitimate the Czech-Slovak federation. Departing from Patocka's phenomenological concept of "home,"[8] He drew a set of concentric circles around the "I" that lies at the center. "Home" is a family, a village, a language, an intellectual environment, a nation (Czech), a society (Czechoslovak), a culture (European), and the world. "Every circle, every aspect of the human home, has to be given its due. It makes no sense to deny or forcibly exclude any one stratum for the sake of another; none should be regarded as less important or inferior. They are part of our natural world, and a properly organized society has to respect them all and give them all the chance to play their roles" (31). According

6. Edmund Husserl, "Philosophy and the Crisis of European Man," in *Phenomenology and The Crisis of Philosophy*, trans. by Quentin Lauer (New York: Harper & Row, 1965), pp. 149-92; Jan Patocka, *Platon et l'Europe*, trans. by Erica Abrams (Lagrasse: Editions Verdier, 1983); Jan Patocka, *Essais heretigues sur la philosophie de l'histoire*, trans. by Erica Abrams (Lagrasse: Editions Verdier, 1981).

7. In Czechoslovakia, the president was elected by both federal houses, the House of the People (where the number of representatives reflected the division of the population) and The House of Nations (where there is an identical number of Czech and Slovak representatives). The elected president had to win a majority of the representatives of each nation, so the Slovaks could veto any candidate.

8. Jan Patocka, *Le Monde natural comme probleme philosophique*, trans. by Jaromir Danek & Henri Decleve (The Hague: Martinus Nijhoff, 1976).

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to Havel's scheme, Slovaks ought to be able to feel at home in Czechoslovakia while also feeling at home in their Slovak national home. But people may feel at home in *several homes on the same level*, as in several languages, several cultures, and *several nationalities*. Some people may have *no nationalist home at all* and feel quite comfortable about it. *There is nothing existential about nationalism.*

Despite this scheme of concentric circles and Havel's acknowledgment of Slovak grievances about the concentration of power in Prague, their legitimate aspiration for national self-expression, and a host of practical reasons for wanting to avoid a costly divorce, in the June 6 elections the Slovaks expressed their wish for independence and their preference for Meciar, an ex-boxer and Communist Boss, over Havel the ex-dissident intellectual. Meciar made it clear that Havel will not be the president of Czechoslovakia. As there is no longer a Czechoslovakia, Havel may well become the first President of the Czech lands, Bohemia and Moravia. If this comes about, he will have a better opportunity to practice his conscience-driven policies. Without the Slovak veto in Parliament, he may find it easier to pass the legislative and electoral reforms he supports. Without the economic pressure of the failing Slovak economy, he will be able to control all weapons sales from the Czech lands, and speed the privatization process. His adaptation to the changing situation in terms of his "existential revolution," "anti-political politics," and the replacement of Heideggerian with Husserlian positions, will actually ease the realization of policies that are now more reasonable than before.

Some Western analysts wait with anticipation for Havel to fail. There is a lot of jealousy in the position of those who claim that Havel must fail *because* he wants to put morality before politics. Most Western politicians lack Havel's stature, intellect and overall integrity. Thus they would like to see him fail to prove it is impossible to mix morality and politics, and do better than in the West. Havel may prove the opposite. To do so he will have to replace what Max Weber called "ethics of conviction" with "ethics of responsibility." He will also have to adopt Husserl instead of Heidegger as his mentor, even more than he has already done. He will also have to learn from his practical political experience how to work with Parliament so he can influence legislation. But even if he fails, it will not be cause for regret, since in the future it will be possible to say that once upon a time, in Prague, there was a Camelot. . . .

Aviezer Tucker

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The Disputed Nietzsche

Friedrich Nietzsche (or maybe not), *My Sister and I* (Los Angeles: AMOK, 1990), 225 pp.

My Sister and I is a disputed text attributed to Nietzsche. Until recently most Nietzsche scholars have accepted Walter Kaufmann's dismissal of the text as a hoax. In fact, Kaufmann claimed to have obtained a confession from the forger. The case appeared closed. The re-publication of the present text again raises the question of its authenticity. The editors claim that Kaufmann dismissed the text because of his unwillingness to accept its revelations. The more sensational of these disclosures include a sexual life which resulted in syphilis, incestuous relations with his sister, and the failure to live his philosophy of life.

The editors of *My Sister and I* claim that the book was written in secret during the years of Nietzsche's illness and smuggled out of the asylum at Jena in order to avoid the censoring hands of his sister and mother. The latter forbade him to write during his illness and his sister Elisabeth had already stopped the publication of *Ecce Homo*, so this is not an unreasonable explanation. This book is another, more intimate, biography, differing stylistically from *Ecce Homo* in that it is more disjointed. The author explains that his work was often interrupted as he tried to keep knowledge of the manuscript's existence from the eyes of doctors and visitors.

Many of the issues in the text Nietzsche has addressed elsewhere. But now, if this is Nietzsche, there seems to be a a certain humility underlying his desire to be the aristocrat. When addressing the costs of being a philosopher, Nietzsche includes "knowing the price in blood people will have to pay in order to usher it [an idea] into a practical existence" (101). And again, "The irony of my life is that I praise the strong, sympathize with the weak, and bear an unquenchable love for the utterly helpless. It is this impossible contradiction in my life which reconciles me to my present dwelling among the lesser gods" (59). Although much of this translation is awkward, the understatement in this last quotation is perfectly Nietzschean.

In this text there is a new level of self-examination which takes a more personal form. Here Nietzsche takes another look at himself. "What Napoleon, the self-appointed aristocrat, created is the delusion of power, the same delusion of grandeur that obsessed me when I appointed myself the intellectual despot of Europe. . . . This madhouse has cured me of such nonsense, for [here] every other man looks at himself as Napoleon. . . ." (85). This is a reflection on a life which he can no longer see in heroic terms.

This book finds Nietzsche looking at his own ability to live his philosophy: the philosopher of *amor fati* confessing to live "secretly in terror of existence"

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(21). The form that terror takes is a fear that prevents him from doing the very things which in his philosophy set him most apart from previous thinkers. Nietzsche has provided images of the philosopher who could dance. The philosopher was now a being who could live in friendly relations to instincts and sensuality. In *Zarathustra* he presented songs in celebration of that life. The mark of the philosopher was now not his or her removal from the world, but the manner of entry into it. It demanded a courage to embrace one's fate, to become what one is. Yet in this text, as the author faces his own life, he finds that in some spheres he has lacked the courage to act on his values. In fact he has allowed himself to be pressured away from trusting himself and instead given in to social forces and external influences.

The form the above mentioned "terror of existence" takes is often directed sexually. The author says "This is the paradox of my existence: I have loved life passionately but have never dared to channel that love in the direction of normal erotic experience" (21). What Nietzsche reveals is a concern with personal aspects of life which his art merely sketched out with broad strokes. "While other writers have written about nothing except people falling in love, I have postponed this trifling subject to the last, but now this personal side of life takes possession of me: . . . falling in love has usurped the whole landscape of my foundered being" (pp. 23-4). In his writings Nietzsche has moved from style to style, with each employed to reveal the complexity and layering of existence. One of the things which has been missing, however, is this type of personal revelation. The point of interest is not merely prurient; it is a question of consistency with his philosophy, according to which there is no part of life that does not require a reevaluation of values and no act so "trifling" that it is morally insignificant.

The author now applies his own values to this aspect of his life and finds that he is concerned with how these revelations will be received. "Strangely enough what worries me most now will be people's reaction to my revelations with regard to my mother, sister and Lou Salomé. There are some things that must not be revealed. . ." (15). Nietzsche has always been the one to unmask the great lies. His critiques are often directed at "unquestioned" values, be they religious, social or academic. Who can consider a man cowardly who called Socrates a pleb, Jesus a masochist and Kant a prude? Yet clearly Nietzsche believes that these revelations will go beyond his earlier transgressions. The boundaries Nietzsche now crosses are well policed. He speaks of his hatred of his mother, incestuous enmeshment with his sister which helped to keep him personally timid, and sexual/spiritual cowardliness in relation to Lou Salomé. What is interesting about this autobiography is not so much these pieces of information as the fact that they are employed in a manner at odds with the usual autobiographical self-aggrandizement. *My Sister and I* also reveals more about Nietzsche's sexual relations with Cosima Wagner, a Countess, a Eurasian prostitute and his love and hatred for all the women in his life. They serve as metaphors for his ultimately unsatisfactory relation to his life.

In recent years many commentators have taken Nietzsche's relation to

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women and to sexuality as the key to understanding his philosophy. Jacques Derrida, David Farrell Krell, Linda Singer, John Caputo, Jean McConnell Graybeal, are a few people who spring immediately to mind. Krell's book *Postponements*[1] begins with a quotation from Bachelard which asks "who will discover the feminine Nietzsche for us?" The postponement to which the title refers is a writing project which Nietzsche kept putting off. It was a drama concerning women, sensual love and tragic death.[2] Krell considers Derrida's well known work *Éperons/Spurs* to be concerned with the "feminine" Nietzsche. As he puts it "*Spurs* brings the question of style, interpretation, and philosophical truth to converge on 'the woman question'."[3] Krell goes on to use images of women: Ariadne, Corinna, Pana, Calina to get at some of Nietzsche's styles. He also sees major ideas in Nietzsche's work, e.g., "action at a distance," as best understood by appealing to an erotic attraction between a man and a woman: "something attracts something else, something feels itself being drawn" (8). In Graybeal's book the questions which converge are those of women and art. The text of *My Sister and I* is full not only of "confessions" but also of female metaphors. The womb and vaginal images appear often. In each of these Nietzsche's actual life experience becomes relevant. What Nietzsche scholar would be so dense as to overlook the relation of life to art and philosophy?

Yet the above interpretations in which women and femininity are metaphorical images, are in a slightly different category from the body of literature which has used Nietzsche's personal life with women as a determining feature of his work. Often these were no more subtle than the 1953 Advertisement for *My Sister and I*. The copy reads "The boy who grew up in a household of manless women — The strange relationship between Nietzsche and his sister Elizabeth — suppressed for fifty years — revealed at last in the philosopher's own confession" (lxvi). For a long time the constitution of Nietzsche's childhood home served as the explanation of his "femininity" and his misogyny. Those who have addressed his relation to women from a narrowly psychological perspective have not produced a satisfactory account of his philosophy.[4] Their approach is too reductive and dismissive of what he did accomplish. Yet Nietzsche's philosophical enterprise was, in a sense, a psychological one. It was dominated by the metaphor of health which stood against the metaphysical, religious, and positivist metaphors which had dominated philosophy. Integrating sensuality — physicality — was seen as central to individual and cultural health. It is unclear whether his misogyny is the most boring thing about Nietzsche or the most fascinating. It is boring because it is so typical and conventional. This is disappointing in an otherwise imaginative and daring thinker. It is the most fascinating issue because like the culture he was trying to heal,

1. David Farrell Krell, *Postponements: Woman, Sensuality and Death in Nietzsche* (Bloomington, Indiana University Press, 1986).
2. Nietzsche referred to this project between 1870 and 1886.
3. Krell, *Postponements*, *op. cit.*, p. 3.

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he suffered from his inability to make peace with women and his own sexuality both metaphorically and literally.

To look at the text as if it were by Nietzsche is far more interesting and more in keeping with Nietzsche's spirit. This is the spirit that believes that there is truth where there is fecundity. Nietzsche's life has been treated as a fiction or as an attempt to have a life through fiction. Truth has to do with values and a reality which we create and project. "Truth" can also be a way of speaking in conformity with a norm. In this way knowledge is policed. Nietzsche tries to reclaim a healthier notion of truth by asserting that lies are truths and fictions more valuable than facts. The value of a truth lies in its life-enhancing properties, not in its conformity to "facts" and the way the world is. Is it not anti-Nietzschean to pursue with positivistic zeal the issue of this text's authenticity?

The 1990 AMOK reissue of *My Sister and I* claims to provide a "revised and updated edition. . . including new textual research supporting its authenticity." This reissue does include documents about the work's authenticity. But not a great deal is new, with the exception of a tiny preface and the translation of a few of Nietzsche's final letters. The main thing this book does is to raise once again the issues concerning the text's authenticity. It is the same translation originally published in 1951.[5]

Unfortunately, it is difficult to judge the work's authenticity. The editors accuse Kaufmann of neutralizing Nietzsche's writing — especially its sexual and vibrant qualities in favor of "a bland scholarliness." These unflattering comments are accurate enough. Neutralizing Nietzsche's polemic is a serious offense usually defended with reference to the "happy" consequence that Kaufmann for the first time managed to have Nietzsche taken seriously in the philosophical community. But this was hardly helpful if the cost is a palpable distortion of the core of Nietzsche's philosophy.

Kaufmann, whom the editors describe as "the most stultifying of pedants," does neutralize much of Nietzsche's work in order that it not be dismissed as mere artistic musings. but are not the qualities of this "pedant," however, the very ones which might prove helpful in establishing the document's authenticity? He is scrupulously careful about matters of fact. Precisely the things

4. See, e.g., Alice Miller, *The Untouched Key* (New York: Doubleday, 1988). Miller dismisses a great deal of Nietzsche's thought as part of his pathology. In this case we have a diagnosis of arrested development due to childhood trauma which was never healed or properly addressed. Her title itself is revealing: "Friedrich Nietzsche: The Struggle Against the Truth." The truth Nietzsche fails to realize is that his abuse as a child motivates his "mature work" and because that abuse is never healed, Nietzsche never matured. She ends her essay by asking "And who knows what that vital Nietzsche would then have been able to give humanity?" (p. 133). A more vital Nietzsche, however, is hard to imagine, although perhaps not a more mature one.

5. Originally published by Boar's Head Books and distributed by Seven Sirens Press, Inc. The German version is said (by the original publisher) to have been confiscated and destroyed by the New York Society for the Suppression of Vice.

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which make him so tedious as a commentator qualifies him as a judge of this document's authenticity. In other words, if Kaufmann's prudery were forced to war with his desire for completeness and order, the latter may well triumph.

Careful as he was, however, he could have been wrong. The present text is merely a reproduction of the 1950s version said to have been made from a worm-eaten "original" which was itself a copy of Oscar Levy's translation. Does this "original" still exist? Maude Rosenthal, Oscar Levy's daughter who carefully guarded his reputation maintains that her father neither translated *My Sister and I* nor wrote the introduction attributed to him. The translation is bad and odd but then Levy did not usually consider himself up to translation. If he made a working translation, we still need to ask why he did so. He worked with a number of excellent translators, who presumably would have been available for this task.

Walter K. Stewart's 1986 article is the most current text introducing evidence in favor of the work's authenticity. He asks the relevant question: What is the point of such a forgery? What does it achieve? Is the point to discredit Nietzsche? This is hardly necessary. Is it to explain his misogyny? Given its background in the history of philosophy, especially next to Schopenhauer, this does not seem necessary. In philosophy misogyny is the norm. It needs no special psychological explanation. The publisher's financial interest seems the most likely reason for the deception.

What can one do with such a text? People believe what they can believe. They hear what they are prepared to hear. Too often Nietzsche has told what no one was ready to hear. For this reason Nietzsche considered himself a posthumous thinker. This takes on an awful vividness when the image is incarnate in the Nietzsche institutionalized in Jena. To be in the land of the living dead was presumably not what he meant by posthumous. Yet this was his ultimate fate. Could *My Sister and I* be the space where Nietzsche tried to negotiate that abyss? "Up to now my work has been artistic because of my refusal to cry out against my private doom. But now I bellow like a wounded animal who is tormented beyond endurance. . ." (19). Nietzsche has accused philosophy of policing truth, of only allowing certain truths to be told. The damage done by not listening to other voices and not believing because of lack of preparation for a new truth is great. Why not believe this possible story?

K. J. Wininger

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Schmitt and International Politics

Paul Edward Gottfried. *Carl Schmitt, Politics and Theory* (Westport, CO: Greenwood Press, 1990). 168 pp.

Recently there has been considerable discussion of particularistic claims to national self-determination or autonomy for ethnic, racial, and cultural groups. Such claims endanger the real or imagined unity of established sovereign states, particularisms of a different sort, i.e., those masquerading as demands for the realization of allegedly universal values, threaten peaceful international relations. Paul Gottfried addresses both issues in his latest book. Although it is presented as a study of the life, thought, and influence of Carl Schmitt (1888-1985), it is also and more importantly the author's effort to present his own views from a Schmittean perspective. He acknowledges that he is outside the mainstream of American political science whose "tyranny of values," in Schmitt's language, he consciously scorns. Like Schmitt and unlike legions of democratic pluralists, Gottfried is a qualified antipluralist and, hence, an opponent of "multi-culturalism." Also like Schmitt and unlike most of his colleagues, Gottfried rejects "internationalism" as the route to a more peaceful world.

Those who appeal to putatively universal values, argues Gottfried, either advance "the national interests of countries other than [their] own" or else support "globalist ideologies that advocate . . . violence in the short run . . . to banish political conflict forever." Although published before the Gulf War, Gottfried's book contends that efforts such as President Bush's to inaugurate a peaceful "new world order" are ill conceived. The problem is that would-be institutionalizers of global peace are "fraught with hostility to the human condition" and, more pointedly, do not understand politics. Schmitt offers an antidote to such confused thinking. He "presents 'the political' not as an ideal, but as a fate that overtakes those who seek to escape it." He rightly posits "the criterion of the political" as intense struggle involving friend-enemy distinctions sufficiently severe that people are willing to fight over differences. Bush might say, and Morton Kondracke does say (*The New Republic*, Nov. 6, 1989), that this perspective is all wrong. Gottfried castigates Kondracke. While the latter rejoices that American foreign policy is now controlled by a "Democracy Gang" whose initiatives optimists expect to engender democratic governments everywhere and global peace, Gottfried foresees that Schmittean politics will vitiate such hopes. Democratic ideologues like Kondracke are at least as dangerous to peace as are dictators: indeed, it is blatantly incendiary to pursue global harmony through ideological confrontations "presented as quests for peace and consensus."

Pessimistic about international politics, Gottfried indicates how domestic

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affairs could be conducted without degenerating into Schmittean antagonisms. He addresses this question as a matter of "erotic politics." "The term 'erotic politics' is being used," he writes, "to characterize the Platonic and, to a lesser extent, Aristotelian ideal of a community held together by the mutual attraction of its parts." Gottfried doubts whether political unity can rest on any other basis. Schmitt makes much the same point by arguing that, "without a culturally and socially cohesive base," a government probably would not enjoy the "minimal consensus about the exercise of power" necessary to maintain public order. Gottfried argues that modern government's capacity to maintain order declines even as the state, paradoxically, looms ever larger. Criticizing democratic pluralism, he questions the durability of a fragile consensus rooted in "procedural guidelines and civility on the part of losing interests." In some societies, e.g., Canada, smoldering erotic politics is already undermining proceduralism's contrived unity. And, even if this fate does not await the US, Gottfried fears that government's "pervasive therapeutic controls," instituted to counter the factious nature of "multicultural or atomized modern society," threaten civil liberty. Dealing with American racial policies as a classical liberal, Gottfried inveighs against "government coercion directed against people held to be discriminating."

Along with Schmitt, Gottfried questions the contemporary liberalism implicit in democratic pluralism. He writes: "The unity of Plato's republic is partly defined by its nature as a Greek society which stands over against an alien and strange race (*genos allotrion*, *othneion*). It may be an entirely modern dream that erotic politics is possible without a unity that excludes." Although other writers, notably Bertrand de Jouvenel, have discussed this more eloquently, no one seems to have done it more succinctly than Gottfried. The "tyranny of values" in American political science should not prevent this matter from being discussed.

Regarding international politics, Gottfried does not glorify war. He merely argues that the "self-limiting" politics of a system of sovereign nation-states offers the best prospects for keeping wars restricted in scope. Europeans moderated their bellicosity in just this way for more than a century after the Peace of Westphalia. Wars then were "limited struggles fought over negotiable issues by professional armies" rather than ferocious "Just wars" catalyzed by ideological differences. Gottfried may be naive to expect relative peace from a revitalized system of accommodating nation-states: he very wisely, however, distrusts the unavoidably militant pursuit of universal values.

More problematic is Gottfried's perspective on domestic politics. Although he hardly excuses racism, he is sympathetic to "the politics of ethnocentrism." This may be fine for nationalities that either already enjoy or can likely attain sovereign statehood. It offers nothing, however, to minorities such as American blacks and Soviet Jews "condemned" to be perpetual minorities in states from which secession is virtually impossible. Perhaps Gottfried will, in a future books discuss politics from the viewpoint of such minorities.

Chris Woltermann

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